CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 554

HAYWOOD PATTERSON, PETITIONER,

vs.

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED DECEMBER 1, 1934.

CERTIORARI GRANTED JANUARY 7, 1935.

SUPREME COURT OF THE UNITED STATES

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ORGANIZATION OF COURT

STATE OF ALABAMA,)
) CIRCUIT COURT.
MORGAN COUNTY.)

BE IT REMEMBERED, That at a regular term of the Circuit Court of Morgan County, Alabama, at which the officers authorized by law to hold or serve such court were serving, the following proceedings were had and done in a cause wherein State of Alabama was plaintiff and Haywood Patterson was defendant. Present and presiding at the trial of said cause, was the Hon. W. W. Callahan, Judge of said Court.

ORDER FIXING DATE FOR SPECIAL SESSION GRAND JURY, SPRING, 1931.

STATE OF ALABAMA,)
)
JACKSON COUNTY.)

It appearing to the Court that the Grand Jury organized for this session of the Court was recessed or adjourned on the 13th day of March, 1931, subject to be re-called at any time by the Court; and, it further appears that since the said adjournment of the said Grand Jury a necessity has arisen for the reconvening of said Grand Jury.

It is, therefore, ordered that the said Grand Jury of Jackson County which is now at recess, and which was organized for this (Spring) session of this Court be reconvened at the Courthouse in Scottsboro on Monday the 30th day of March, 1931 to consider such matters as may be submitted to it by the Court, or that deserves their consideration.

The Clerk will issue an order to the Sheriff of this County to notify the members of said Grand Jury of this order and summons them to appear on said 30th day of March, 1931, at 10 o'clock A. M.

This the 26th day of March, 1931.

A. E. Hawkins,
Judge 9th Circuit.

I hereby certify that the above is a true and correct copy of the order of Court fixing the date for a Special Session of the Grand Jury in Jackson County, Alabama as filed in my office.

Witness my hand and seal of office this March 11, 1933.

C. A. Wann,
Clerk Circuit Court,
(SEAL) Jackson County, Ala.

Filed in office this Mar. 20, 1933.
J. H. Green, Clerk.

CLERK'S ORDER TO SHERIFF TO SUMMONS GRAND JURY, AT RECESS

STATE OF ALABAMA)
)
JACKSON COUNTY)

TO THE SHERIFF OF JACKSON COUNTY, ALABAMA, GREETINGS:

A order issued by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama to the Clerk of the Circuit Court of Jackson County, Alabama, that the Grand Jury of the Spring Term, 1931, that recessed on March 13th, 1931 subject to recall and it appearing to the court that since adjournment or recess a necessity

has arisen for the reconvening of said Grand Jury, and upon said order, you are hereby commanded to notify or summons said Grand Jury to appear at the Courthouse at Scottsboro, Alabama, on Monday the 30th day of March, 1931 at 10 o'clock A. M. to consider such matters as may be submitted to it by the Court, or anything that deserves their consideration.

The above order being made by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, March 26th, 1931.

The following names are the Grand Jury for the Spring Term, 1931, recessed on March 13th, 1931 subject to recall.

Chas. Morgan,
Has. H. Rogers,
J. H. Cox,
G. W. Minton,
Geo. B. Phillips,
Wm. Rash,
J. P. Brown,
Arthur Gamble,
C. A. Mason,
Nash Manning,
J. M. Tedwell,
A. E. Chambless,
John G. Hicks,
Robert E. Hall,
Raymond Hodges,
C. D. Paul,
J. N. Ragsdale,
Walter Berry.

And have you then and there your returns how you have executed this writ.

Witness my hand, this 26th day of Mar. 1931.

C. A. Wann,
Clerk, Circuit Court.

I have executed the within by summoning all the within names Grand Jurymen. This March 30th, 1931.

M. L. Wann,
Sheriff.

I hereby certify that the above and foregoing page is a true and correct copy of the Clerk's order to the Sheriff of Jackson County to summon Grand Jury at Recess, the same being on file in my office.

Witness my hand and seal of office this March 11, 1933.

C. A. Wann,
(SEAL) Clerk Circuit Court,
Jackson County, Ala.

Filed in office this Mar. 20, 1933.
J. H. Green, Clerk.

ORDER FIXING DATE FOR SPECIAL SESSION OF CIRCUIT COURT

STATE OF ALABAMA)
)
JACKSON COUNTY)

In the opinion of A. E. Hawkins, Judge of the Ninth Judicial Circuit, that it is proper and necessary that a Special Session of the Circuit Court of Jackson County, Alabama, should be held in said County, beginning on Monday, April 6, 1931, and to continue as long as necessary to dispose of cases set for trial at said Special Session.

It is, therefore, hereby ordered that a Special Session of the Circuit Court of Jackson County, Alabama, be held at the Courthouse at Scottsboro, beginning on Monday the 6th day of April 1931 and to continue as long as necessary to dispose of the cases that will be set for trial at said Special Session.

It is further ordered that seventy-five regular jurors be this day drawn for said Special Session of said Court and that the Sheriff of Jackson County, is hereby ordered

to summon all of said seventy-five regular jurors to appear at said Special Session of this Court on Monday the 6th day of April, 1931.

It is further ordered that all judgments by default or judgments in non-jury cases may be entered during said Special Session and that pleas of guilt may be taken in Criminal cases and Equity cases may also be submitted for orders and decrees at said Special Session.

This the 26th day of March, 1931.

A. E. Hawkins,
Judge of the Ninth Judicial Circuit.

I hereby certify that the above is a true and correct copy of order fixing date for Special Session of Circuit Court, Jackson County, Alabama, and the same being on file in my office.

Witness my hand and seal of office this March 11, 1933.

C. A. Wann,
(SEAL) Clerk Circuit Court, Jackson County, Ala.

Filed in office this Mar. 20, 1933.
J. H. Green, Clerk.

ORDER FOR REMOVAL

THE STATE OF ALABAMA	)	
	)	
VS.	)	CIRCUIT COURT OF
	)	JACKSON COUNTY,
HAYWOOD PATTERSON,	)	
EUGENE WILLIAMS,	)	ALABAMA.
OZIE POWELL,	)	
WILLIE ROBERSON,	)	CHARGED WITH
ANDY WRIGHT,	)	RAPE.
OLEN MONTGOMERY,	)	
CHARLIE WEEMS,	)	ORDER FOR
CLARENCE NORRIS,	)	REMOVAL.
ROY WRIGHT.	)	

On the hearing of the petition for a change of venue filed by all the defendants in the above styled cause,

came the State of Alabama, by its Attorney General, and the defendants by their Attorneys, and the Attorney General stating in open court that while he does not consent to a change of venue, that he does not resist the motion therefor. The petitioners having made known to the court by written petition and by statements of counsel in open court that they desire the trial of this case transferred to another County, it is, therefore, ordered that the prayer of said petition be and the same is hereby granted and the case is hereby removed to the Circuit Court of Morgan County, Alabama, for trial.

It is further ordered that the Clerk of the Circuit Court of this County, namely, Jackson County, Alabama, make out a transcript of all the entries, orders and proceedings in the case, including the organization of the grand jury, the indictment, the indorsements thereon, and all the entries relating thereto, the undertakings or recognizances of the defendant, all the orders and judgments thereon and a copy of this order, to which transcript he shall attach his certificate and his seal, and he shall forward said transcript in a package under seal by a special messenger, or by express, or by registered mail, or by delivering it in person, to the Circuit Clerk of Morgan County, Alabama, and he must also enclose in the package, the original subpoenas in the case.

A. E. Hawkins,
Judge of the Circuit Court of
Jackson County, Alabama.

Filed in office this Mar. 20, 1933.
J. H. Green, Clerk.

INDICTMENT

THE STATE OF ALABAMA,	)	CIRCUIT COURT
	)	Special March
JACKSON COUNTY.	)	Term, 1931

The Grand Jury of said County charge that before the finding of this indictment Haywood Patterson, Eugene

Williams, Charlie Weems, alias Charles Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, alias Clarence Morris, whose names to the Grand Jury are otherwise unknown than as stated, forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama.

No Prosecutor

H. G. Bailey,
Solicitor for Ninth Judicial Circuit.

A TRUE BILL J. N. Ragsdale, Foreman Grand Jury.

Filed in open court on the
31 day of March, 1931.
C. A. Wann, Clerk.

Witness Victoria Price
Ruby Bates
Dr. R. R. Bridges
Dr. Linch
Arvell Gilly
C. M. Latham
C. S. Broadway
C. F. Simmons
Tom Taylor Rousseau
Jim Broadway

I hereby certify that this is a true and correct copy of indictment number 2402 as it appears of record in my office in Indictment Record E at page 193.

Witness my hand and seal this the 9th day of March, 1933.

C. A. Wann,
Clerk.

(Circuit Court of Jackson County, Ala. SEAL)

Filed in office this Mar. 20, 1933.
J. H. Green, Clerk.

WRIT OF ARREST

STATE OF ALABAMA,)
) CIRCUIT COURT NO. —
JACKSON COUNTY.)

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

An Indictment having been found against Haywood Patterson, et als, at the Special Session, 1931, of the Circuit Court of Jackson County, for the offense of Rape.

You are therefore commanded forthwith to arrest the said Haywood Patterson et als, and to commit them to jail, unless they give bail to answer such indictment at the said Circuit Court of Jackson County, in the sum of _____ dollars.

Witness my hand, this 31 day of March, 1931.

C. A. Wann,
Clerk.

Executed by arresting the within named defendants and committing them to jail. March 31, 1931.

M. L. Wann,
Sheriff.

I hereby certify that the above is a true and correct copy of the Writ of Arrest in the cases of the State vs. Haywood Patterson, et als cases numbering from 2402 to 2421 inclusive.

Witness my hand and seal of office this March 9th, 1933.

C. A. Wann,
Clerk Circuit Court, Jackson County, Ala.

(Circuit Court Jackson County, Ala. SEAL)

Filed in office this Mar. 20, 1933.
J. H. Green, Clerk.

ORDER FOR SPECIAL SESSION

IN THE CIRCUIT COURT OF MORGAN COUNTY, ALABAMA.

It is ordered that a special session of the Circuit Court of Morgan County, Alabama, be and the same is hereby set to be held and convened on Monday, November 27, 1933, for the purpose of hearing and considering such matters and causes as may properly come before said court on said date. Said court to remain in session or to be passed or continued as may appear to the court proper and necessary for the disposition of such matters and causes as may come before the court at such time.

The Clerk will enter this order upon the permanent records of this court.

This, October 19, 1933.

W. W. Callahan,
Circuit Judge.

Filed in office Oct. 19, 1933.
J. H. Green, Clerk.

ORGANIZATION OF COURT

Nov. 20, 1933.

STATE OF ALABAMA,)
) CIRCUIT COURT
MORGAN COUNTY.)

MONDAY MORNING, November 20, 1933, the Court was duly opened according to law, present and presiding, the Hon. W. W. Callahan, one of the Judges of the Eighth Judicial Circuit of Alabama, Hon. Wade Wright, Solicitor of said Circuit, Hon. A. W. Davis, Sheriff of Morgan County, Alabama, and John H. Green, Clerk of said Court. The Court now being open according to law, the following proceedings were had and done, to-wit;

DRAWING OF JURORS—SPECIAL SESSION

For November 27th, 1933.

STATE OF ALABAMA,)
) CIRCUIT COURT.
MORGAN COUNTY.)

Now, on this the 20th day of November, 1933, the Hon. W. W. Callahan, one of the Judges of the Eighth Judicial Circuit of Alabama, in open court, at the Court House in Decatur, Morgan County, Alabama, drew from the jury box of Morgan County, Alabama, the names of 50 persons to serve as petit jurors for the week of this Court, beginning on the 27th day of November, 1933.

ARRAIGNMENT

STATE OF ALABAMA)
)
1977 VS.)NOVEMBER 20th, 1933
)
HAYWOOD PATTERSON,) Charge—Rape
OZIE POWELL, WILLIE ROBERSON, OLEN MONTGOMERY, CLARENCE NORRIS, ALIAS CLARENCE MORRIS, CHARLIE WEEMS & ANDY WRIGHT.) Transferred from Jackson County, Alabama, on Motion for Change of Venue.

Came the State by its Solicitor and the defendants in their own proper person and by attorney into open court, and this cause coming on to be heard, the defendants file motion to quash the indictment in this cause.

The said defendants being now personally present in open court, and by attorney, and being duly arraigned upon the indictment in this cause, plead not guilty thereto. Thereupon, the defendants each demand a severance. It

is therefore hereby ordered by the Court that a severance be and is hereby granted. Whereupon, the State by its Solicitor elects to try first the defendant Haywood Patterson.

STATE OF ALABAMA.)
)
1977 VS.) NOVEMBER 20th, 1933
) RAPE
HAYWOOD PATTERSON.)

Came the State by its Solicitor and the defendant Haywood Patterson in his own proper person and by attorney into open court, and the said defendant being arraigned upon the indictment in this cause, pleads not guilty thereto. Cause set for trial on Monday, November 27th, 1933. It appearing to the Court that heretofore the names of 50 persons, qualified citizens of the County, have been legally drawn to serve as regular jurors in this court for the week commencing November 27th, 1933, it is ordered that a list of 100 persons shall constitute the venire from which a jury shall be selected to try the defendant, Haywood Patterson in this cause; and the Court now proceeds in open court, to draw from the jury box of Morgan County, Alabama, the names of 50 special jurors, which together with the names of the 50 regular jurors, heretofore drawn as jurors for the week of this Court commencing on November 27th, 1933, shall constitute the venire from which a jury shall be selected to try this defendant, Haywood Patterson, in this cause. The Sheriff of this County is hereby ordered to summon all persons whose names have this day been drawn as special jurors and all persons who have been drawn as regular jurors for this court for the week commencing on November 27th, 1933, to be and appear in this court on the 27th day of November, 1933, and the Sheriff is further ordered to serve forthwith upon the said defendant, Haywood Patterson, a copy of the indictment in this cause and a list of all

persons drawn as jurors for the week of this Court commencing on November 27th, 1933, and a list of the names of the persons this day drawn as special jurors in this cause.

MOTION FOR CHANGE OF VENUE

(This motion is set out in full at pp. 168-202 of Bill of Exceptions.)

Filed in open Court
Nov. 20th, 1933.
J. H. Green, Clerk

JUDGMENT ON MOTION FOR CHANGE OF VENUE

STATE OF ALABAMA)	
)	
1977. VS.)	
)	
HAYWOOD PATTERSON,)	
OZIE POWELL, WILLIE)	
ROBERSON, OLEN)	NOVEMBER 20th, 1933
MONTGOMERY, CLAR-)	Charge — Rape
ENCE NORRIS, ALIAS)	
CLARENCE MORRIS,)	
CHARLIE WEEMS &)	
ANDY WRIGHT.)	

Came the State by its Solicitor and the defendants in their own proper person and by attorney into open court, and the defendants file a motion or application for a change of venue in this cause; and the State by its Solicitor joins issue on the allegations contained in the said motion or application. Issue being now joined, and the said motion being now presented to and being duly considered and understood by the court, and after hearing the evidence introduced, both by the State and the de-

fendants, the Court is of the opinion that said motion is not well taken, and should be overruled. It is therefore considered, ordered and adjudged by the Court, on this November 21st, 1933, that said motion or application of the defendants for a change of venue in this cause, be and the same is hereby, overruled. To which action of the court the defendants then and there in open court duly reserved an exception.

MOTION TO QUASH VENIRE OF PETIT JURORS

(This motion is set out in full at pp. 419-429 of Bill of Exceptions.)

Filed in office this Nov. 20th, 1933.
J. H. Green, Clerk.

JUDGMENT ON MOTION TO QUASH VENIRE OF PETIT JURORS

STATE OF ALABAMA,)
) NOVEMBER 21st, 1933.
1977 VS.)
) RAPE
HAYWOOD PATTERSON.)

Came the State by its Solicitor and the defendant, Haywood Patterson, in person and by attorney into open court, and the said defendant files motion to quash the venire of petit jurors drawn to try the said defendant, Haywood Patterson, in this cause. Thereupon, the State by its Solicitor joins issue on the allegations contained in the said motion. Issue being now joined, and the said motion being now presented to and being duly considered and understood by the Court, and after hearing the evidence introduced, both by the State and the defendant, the Court is of the opinion that said motion is not well taken, and should be overruled. It is therefore con-

sidered, ordered and adjudged by the Court on this November 23, 1933, that the said motion of the defendant, Haywood Patterson to quash the venire of petit jurors, be and the same is hereby overruled. To which action of the Court, the defendant duly reserved an exception.

MOTION TO QUASH INDICTMENT

(This motion is set out in full at pp. 43-51 of Bill of Exceptions.)

Filed in office this Nov. 20, 1933.
J. H. Green, Clerk.

JUDGMENT ON MOTION TO QUASH INDICTMENT

STATE OF ALABAMA	)	
	)	
1977 VS.	)	
	)	
HAYWOOD PATTERSON,	)	
OZIE POWELL, WILLIE	)	
ROBERSON, OLEN	)	NOVEMBER 23rd, 1933.
MONTGOMERY, CLARENCE NORRIS, ALIAS	)	Charge—Rape
CLARENCE MORRIS	)	
CHARLIE WEEMS AND	)	
ANDY WRIGHT.	)	

Came the State by its Solicitor and the defendants in their own proper person and by attorney into open court, and the defendants having heretofore, on the 20th day of November, 1933, filed a motion to quash the indictment in this cause; and the said motion being now presented to and being duly considered and understood by the court, and after hearing the evidence introduced both for the State and the defendants, the court is of the opinion that

said motion to quash the indictment in this cause should be overruled. It is therefore considered, ordered and adjudged by the court, on this the 25th day of November, 1933, that the said motion to quash the indictment in this cause be, and the same is hereby overruled, to which action of the court, the defendants then and there in open court, reserved an exception.

ORGANIZATION OF COURT, NOVEMBER 27TH, 1933.

STATE OF ALABAMA,)
) CIRCUIT COURT.
MORGAN COUNTY.)

Monday morning, November 27th, 1933, present and presiding the Hon. W. W. Callahan, one of the Judges of the Eighth Judicial Circuit of Alabama, Hon. Wade Wright, Solicitor of the said Circuit, Hon. A. W. Davis, Sheriff of Morgan County, Alabama, and John H. Green, Clerk of said Court.

The Court being now open according to law, came the Sheriff and presented in open court the venire heretofore issued to him for jurors for this week of this court, which is in the following words and figures, to-wit:

STATE OF ALABAMA,)
) CIRCUIT COURT.
MORGAN COUNTY.)

TO THE SHERIFF OF SAID COUNTY—GREETING:

You are hereby commanded to summon the following named persons to appear and serve as jurors in this Court during the week beginning on Monday, the 27 day of November, 1933, at 8:30 o'clock, A. M., they having been drawn according to law to serve as jurors for this week of said Court, to-wit:

NAME	ADDRESS	OCCUPATION
1. Owen Atkinson	Valhermosa	Farmer
2. Will F. Bean	Decatur # 2	Farmer
3. Hickory O. Bridges	Danville	Farmer
4. William L. Carpenter	1422 5th Ave. South	Carpenter
5. Virgil O. Clark	Falkville	Banker
6. Elbert M. Cobb	Eva # 1	Farmer
7. J. Robert Daniel	521 Line St.	Insurance
8. George W. Dinsmore	Joppa # 1	Farmer
9. Walter Durham	522 Grant St.	Unemployed
10. James A. Forman	Somerville # 4	Farmer
11. Floyd N. Free	W. Moulton St.	L & N
12. Henry Goad	1302 4th Ave. E.	Capitalist
13. Floyd F. Griffis	1305 4th Ave. E.	Mechanic
14. Melvin A. Hardin	Falkville # 2	Farmer
15. Warren J. Hester	Joppa # 1	Farmer
16. Harry Higdon	412 Sherman St.	Mgr.
17. Melvin M. Hipps	Eva	Farmer
18. Phil Humphrey	232 Jackson St.	Salesman
19. Gladstone G. Isley	Hartselle # 2	Farmer
20. James H. Johnson	Walnut Street	Bookkeeper
21. Carl Jones	515 Grant St.	Foreman
22. George B. Kelley	Eva # 1	Farmer
23. Wm. C. Martin	Eva # 1	Farmer
24. T. G. (Bud) Masterson	511 3rd Ave. W.	Salesman
25. Raymond Mint[illegible]r	Falkville # 2	Farmer

NAME	ADDRESS	OCCUPATION
26. Earl McClung	Eva # 1	Farmer
27. Leroy McEntire	717 Line St.	Teller
28. L. Hildred McDaniel	Joppa # 2	Farmer
29. Edward H. Nelson	1112 5th Ave. E.	Truck Driver
30. Albert M. Peck	Somerville # 2	Farmer
31. Thomas H. Pirie	205 Prospect Drive	Unemployed
32. Albert P. Postell	Hartselle	Farmer
33. William R. Pruitt	617 7th Ave. West	Clerk
34. Avery Roberts	Decatur # 3	Painter
35. Claude J. Roberts	Somerville # 3	Farmer
36. Sol Roberts	Decatur # 3	Farmer
37. Fred S. Robinson	Decatur # 2	Farmer
38. James E. Russell	Decatur # 3	Farmer
39. Jno. H. Russell	Decatur # 3	Farmer
40. James M. Ryan	Decatur # 2	Farmer
41. Otis J. Self	Eva # 1	Farmer
42. Archie T. Shropshire	1411 5th Ave. So.	Merchant
43. S. Edward Smith	Eva # 1	Farmer
44. Robert G. Sybert	Hartselle # 2	Farmer
45. Monroe R. Teague	Hartselle # 1	Farmer
46. Wm. H. Thompson	Decatur # 3	Unemployed
47. Robert E. Wardlow	721 5th Ave. West	Unemployed
48. Addie Wiley	Hartselle	Farmer
49. Richard T. Williams	Hartselle	Taxi Driver
50. Himan Wohl	504 Bank St.	Merchant

And have you then and there this writ with your endorsement thereon.

Witness my hand this 20 day of Nov. 1933.

J. H. Green, Clerk.

In pursuance of the mandate of the above writ, I have executed the same by summoning as directed in the said writ each of the within named persons, except Will F. Bean, Floyd N. Free, Melvin A. Hardin, Thomas H. Pirie, Robert E. Wardlow, Monroe R. Teague and Wm. H. Thompson, who were not found.

A. W. Davis, Sheriff.

The Court then caused the names of all jurors served to be called and examined under oath, and upon said call and examination, and for good and legal cause shown, the following named persons were excused by the Court from service as jurors for this week of this Court, to wit: James A. Forman, Harry Higdon, Carl Jones, Leroy McEntire, Sol Roberts and Fred S. Robinson.

Thereupon, the following named persons being ascertained to be competent and qualified persons to serve as petit jurors for this week of this court, were duly empaneled and sworn according to law, to wit: Owen Atkinson, Hickory O. Bridges, William L. Carpenter, Virgil O. Clark, Elbert M. Cobb, J. Robert Daniel, George W. Dinsmore, Walter Durham, Henry Goad, Floyd F. Griffis, Warren J. Hester, Melvin M. Hipps, Phil Humphrey, Gladstone G. Isley, James H. Johnson, George B. Kelley, Wm. C. Martin, T. G. (Bud) Masterson, Raymond Minter, Earl McClung, L. Hildred McDaniel, Edward H. Nelson, Albert M. Peck, Albert P. Postell, William R. Pruitt, Avery Roberts, Claude J. Roberts, James E. Russell, Jno. H. Russell, James M. Ryan, Otis J. Self, Archie T. Shropshire, S. Edward Smith, Robert G. Sybert, Addie Wiley, Richard T. Williams and Himan Wohl.

Thereupon the following proceedings were had and done, to wit:

COURT'S ORAL CHARGE

(The oral charge is set out in full at pp. 730-747 of Bill of Exceptions.)

JUDGMENT AND SENTENCE

STATE OF ALABAMA)
) NOVEMBER 27th, 1933.
1977 . VS.)
) CHARGE—RAPE
HAYWOOD PATTERSON)

Comes the State by its Solicitor, and the defendant, Haywood Patterson in his own proper person and by attorney into open court, and the said defendant, Haywood Patterson, being arraigned upon the indictment in this cause, pleads not guilty. Issue being now joined, came a jury of good and lawful men, to wit, John H. Russell and eleven others, who having been duly empaneled and sworn according to law, and having heard the evidence introduced, and the charge of the Court, upon their oaths say, on this the 1st day of December, 1933, "We, the jury, find the defendant guilty as charged in the indictment and fix his punishment at death. John H. Russell, Foreman." It is therefore considered, ordered and adjudged by the Court that the defendant, Haywood Patterson, be and he is hereby adjudged guilty as charged, and that his punishment be fixed at death.

Now, on this the 6th day of December, 1933, the defendant, Haywood Patterson being personally present in open court, and by attorney, and the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered, ordered and adjudged by the Court that the defendant, Haywood Patterson, in accordance with the verdict of the jury, be and he is hereby sentenced to death by electrocution in Kilby Prison, at the City of Montgomery, Montgomery

County, Alabama, and it is hereby ordered by the Court that Friday, the 2nd day of February, 1934, be and is hereby set and fixed for the execution of such sentence of death of the said defendant, Haywood Patterson.

It is further considered, ordered and adjudged by the Court that, when a death warrant for his execution shall have been duly issued according to law, the Sheriff of Morgan County, Alabama, is hereby ordered to deliver the said Haywood Patterson as required by law to the Warden of Kilby Prison at Montgomery, Alabama, and that the said Haywood Patterson be confined in said Kilby Prison until the 2nd day of February, 1934; and that on said day, at the time and place provided by law, the said Warden of Kilby Prison, or his deputy thereunto legally appointed, shall cause to pass through the body of the said Haywood Patterson a current of electricity of sufficient intensity to cause his death, and that such current of electricity be applied to his body and continued until the said Haywood Patterson is dead.

Before passing sentence the Court proceeded to ascertain by examination of said convict, that he is of the male sex, colored race, age 21 years, health good, and his mother's name is Janie Patterson, 910 West 19th St. Chattanooga, Tennessee.

The said defendant, Haywood Patterson desiring an appeal, and now, on this Dec. 6, 1933, in open court, giving notice of an appeal to the Supreme Court of Alabama, and requesting a suspension of the execution of this judgment and sentence of this Court pending his said appeal; it is therefore hereby ordered by the Court that the judgment and sentence of this Court be and the same is hereby suspended pending the said appeal and it is further ordered that said defendant, Haywood Patterson be held in custody.

MOTION FOR NEW TRIAL (NO. 1.)

STATE OF ALABAMA,	)	No. _____
	)	IN THE CIRCUIT
VS.	)	COURT OF MOR-
	)	GAN COUNTY, AL-
HAYWOOD PATTERSON.	)	ABAMA.

Comes the defendant, Haywood Patterson, and moves the Court to set aside the verdict of the jury and to grant him a new trial in the above styled cause, and assigns the following reasons therefor:

1. Because there is no evidence to support the verdict of the jury and the judgment of the Court and the evidence preponderates against the verdict and in favor of the defendant.

2. Because the Court erred in failing to quash the indictment and indictments returned by the grand jury of Jackson County, Alabama, for the reasons that said indictment and indictments were illegal and void, because they violated the Fourteenth Amendment to the Constitution of the United States and violated the due process of law clause of said constitution.

3. A new trial should be granted because the Court overruled the motion to quash the trial panel of petit jurors, because the jury list was prepared and drawn and showed that all citizens of the colored race qualified for jury duty had been and were systematically excluded from the jury roll of Morgan County, Alabama, alone on the ground that they were negroes and for no other reason.

4. A new trial should be granted because the Court erred in refusing to permit the defendant to cross examine Victoria Price and to show where she spent the night of March 24th, 1931, in Chattanooga, and to prove her associations in Chattanooga and with whom she as-

sociated and to lay foundation and predicate for her impeachment.

5. A new trial should be granted because the Court was in error in failing to grant a change of venue from Morgan County to some other county in the State of Alabama, because public opinion in and throughout Morgan County was so hostile to the defendant, Haywood Patterson, that he could not obtain a fair and impartial trial by an unbiased jury in Morgan County, and he was convicted because of inflamed public opinion against him and because he was accused by a white woman and he being a Negro.

6. A new trial should be granted because of fraud committed by the addition of names to the Scottsboro jury rolls, since January 21st, 1931, and the adding thereto of the names of three or four negroes in violation of the law and which fraud was perpetrated for the purpose of defeating this defendant in an effort to quash the indictment and indictments against him and his co-defendant in the above styled cause.

The proof showed that no negro had ever served on a jury in Jackson County in sixty years and the expert handwriting witness testified that the few names of colored men added to the jury roll were written over or into the red line on the jury roll, and the proof showed that the red lines were made when the jury board retired from office about the first of the year 1931, and a new jury board was organized and the names of these colored jurors were super imposed over the red line and showed that the names were added to the jury roll of Jackson County and this was done to deceive the Judge of this Honorable Court and to defeat the administration of justice and to deny this defendant due process of law that was a violation of the laws of the State of Alabama, and a violation of his constitutional rights, and this was an irregular proceeding and an abuse or a corruption of the Jackson County jury roll contrary to law.

7. A new trial should be granted under the Constitution of the United States, Amendment 14, Section 1, because the defendant was entitled to be tried by a jury of his peers and to be tried in a county where due process of law could be administered and where public opinion was not such as to embarrass the prisoner or his counsel, but in this case public opinion was so inflamed and prejudice so great in Decatur and Morgan County that a fair, unbiased, impartial trial was impossible, and the defendant was denied his constitutional rights because thereof.

8. The defendant will file an amended motion to this motion within a short time, but cannot finish his motion for a new trial on account of delay incident to getting the transcript copied by the Court reporter, and because of the large record containing the evidence, and he hereby requests this Honorable Court to continue the hearing of this motion for thirty days after this date for the purpose of permitting him to file his motion when he can present the transcript of the evidence in this cause and set out in detail his grounds for a new trial in detail, as required by the laws of the State of Alabama.

G. W. Chamlee
Attorneys for Haywood Patterson

I hereby certify that I served a copy of this motion by mail on Honorable Thomas E. Knight, Jr., Attorney General, for the State of Alabama. Dated December 28th, 1933, at Chattanooga, Tennessee.

G. W. Chamlee,
Attorney for defendant.

Filed in office this Dec. 29, 1933.
J. H. Green, Clerk.

MOTION FOR NEW TRIAL NO. 2.

(This motion is set out in full at pp. 26-42 of Bill of Exceptions.)

Filed in office this Dec. 29, 1933
J. H. Green Clerk.

MOTION TO STRIKE MOTION FOR NEW TRIAL

STATE OF ALABAMA, PLAINTIFF,	)
	) IN THE CIRCUIT COURT
VS.	) OF MORGAN COUNTY,
	) ALABAMA.
HAYWOOD PATTERSON, DEFENDANT.	)

Comes the State of Alabama, plaintiff in the above styled cause, and moves this Honorable Court to strike the defendant's motions for a new trial or that which purports to be motions for a new trial and all amendments thereto and for grounds of said motion to strike says as follows:

That this Court no longer has jurisdiction, power or authority over the judgment rendered in this cause on the 6 day of December, 1933. The defendant was tried, convicted and sentenced during the 1933 fall term of the Circuit Court of Morgan County, Alabama which term of Court ended by operation of law on the 23d day of December, 1933. That the defendant did not file any motion for a new trial or in arrest of judgment until after the expiration of said term of court, to-wit on the 29th day of December at which time this Court had lost jurisdiction over said judgment.

Respectfully submitted,

Thomas E. Knight Jr.
Attorney General

Thos. Seay Lawson,
Assistant Attorney General.

Filed in open court this 24th day
of February, 1934.
J. H. Green, Clerk.

JUDGMENT ON MOTION

STATE OF ALABAMA)
)
1977 VS.) JANUARY 1st, 1934.
)
HAYWOOD PATTERSON.)

In this cause, the defendant having filed a motion to set aside the verdict and judgment in this cause, and to grant unto him a new trial, and upon request of the said defendant for continuance, it is considered, ordered and adjudged by the court that said motion is without waiver or prejudice to the parties hereto continued to January 26th, 1934 at 10 o'clock A. M.

Now, on this the 26th day of January, 1934, upon request of the defendant, it is considered, ordered and adjudged by the court that the motion for a new trial in this cause be and is, without waiver or prejudice to the parties hereto, continued to February 24th, 1934 at 10 o'clock A.M.

Now, on this the 24th day of February, 1934, this cause coming on to be further heard before the court upon the motion of the defendant to set aside the verdict and judgment in said cause, and to grant unto the said defendant a new trial, came the State by its Solicitor and the defendant by attorney into open court, and the State by its Solicitor files in open court a motion to strike the defendant's motion for a new trial in this cause from the docket; and the said motion to strike being now presented to and being duly considered and understood by the court, it is thereupon considered, ordered and adjudged by the court that the said motion to strike be and is hereby sustained, and the defendant's said motion for a new trial in this cause be and is hereby stricken. To which action of the court the defendant then and there duly reserved an exception.

APPLICATION FOR REHEARING OF MOTIONS FOR NEW TRIAL.

IN THE CIRCUIT COURT OF MORGAN COUNTY ALABAMA.

STATE OF ALABAMA)
)
against)
)
HAYWOOD PATTERSON, DEFENDANT.)

STATE OF ALABAMA)
)
against)
)
CLARENCE NORRIS, DEFENDANT.)

APPLICATION FOR REHEARING OF MOTIONS FOR NEW TRIALS.

Come the defendants, Haywood Patterson and Clarence Norris, named in the above styled cause, by their attorneys, Samuel S. Leibowitz, George W. Chamlee, Joseph R. Brodsky, Osmond K. Fraenkel, and Elias M. Schwarzbart, and move the court to grant and allow reargument of the motions for new trials, heretofore made, and stricken by the court on February 24, 1934; and for cause of said application assign the following reasons and causes, separately and severally:

I. Your petitioners, Haywood Patterson and Clarence Norris, after trials had before Honorable W. W. Callahan, Judge of the Circuit Court, Morgan County, at Decatur, were found guilty as charged in the indictment, on December 1, 1933, and December 6, 1933, respectively, and their punishment fixed at death. On December 6, 1933, the court made and entered judgment of conviction of your petitioners and sentenced your petitioners to die. Thereupon the attorneys for petitioners made and filed

notices of appeal and the execution of the sentences on your petitioners were stayed pending the outcome of the appeal.

II. On December 1, 1933, after the jury in the case of Haywood Patterson brought in a verdict of guilty, Samuel S. Leibowitz, chief defense counsel, requested of the court an extension beyond thirty days within which to file a motion for a new trial, giving as reasons therefor that the transcript of the proceedings and trial would not be transcribed and available to defense counsel for at least one month; that said transcript was essential for the preparation of a proper motion for a new trial and that additional time would be required after receipf of the transcript to prepare and file the said motion.

The foregoing incident and the incidents herein below referred to are more particularly set forth in the affidavit of Joseph R. Brodsky, hereto annexed and made part hereof as if fully set forth herein.

III. The court denied tl said application for extension beyond thirty days, and stated to defense counsel, in effect: You have thirty days within which to make a motion for a new trial, and after you have made such motion within the thirty-day period, you may then apply to the court for additional thirty-day extensions in order to file the amended motion for a new trial based upon the transcript.

IV. The above colloquy between the court and defense counsel set forth in paragraphs II and III, occurred in open court in the presence of Thomas E. Knight, Jr., Attorney General of the State of Alabama, chief of counsel for the State, and other counsel for the State, and was not objected to or commented upon by them.

V. The colloquy set forth above in paragraphs II and III was not recorded by the official stenographer, E. P. Kingsbery, and is not in the official transcript of the trial.

VI. However, the occurrence of the above colloquy is confirmed by the affidavit of Joseph R. Brodsky, above referred to, and by newspaper articles of the proceedings at the trial, which are more fully set forth in said affidavit of Joseph R. Brodsky.

VII. Subsequently, on December 6, 1933, at the time of the sentence of Haywood Patterson, and of Clarence Norris, who had been found guilty on that day, Samuel S. Leibowitz, defense counsel, stated to the court that he assumed that the same rule that the court made in the Patterson case with reference to the procedure on the motion for a new trial, also applied in the case of Norris. The court replied that that was so, or words of similar effect.

VIII. Subsequently, on December 29, 1933, defense counsel made and filed a motion for a new trial in the case of Haywood Patterson, and on January 2, 1934, made and filed a motion for a new trial in the case of Clarence Norris. At the time of filing each of said motions, the court was notified of the filing thereof, and continuances requested. The court acceded to the requests of defense counsel and continued the motions from time to time, finally fixing the date for argument on said motion at February 24, 1934.

Exact copies of the telegraphic and other correspondence between the court and defense counsel with reference to the above are annexed hereto and made part hereof, as if fully set forth herein.

IX. Copies of the aforesaid motions for new trials in the cases of Patterson and Norris were served by mail on Thomas E. Knight, Jr., on December 29, 1933, and January 2, 1934, respectively, and were received and retained by him without any objection being made to the said motions upon any ground whatsoever, either to the court or defense counsel, until February 24, 1934, the day of the argument of the said motion.

X. On February 24, 1934, the date set by the court for argument, the State appeared by Attorney General Knight, and defendants by Osmond K. Fraenkel and George W. Chamlee. The State moved to strike defendants' motions on the ground that said motions allegedly were not made, as required by the law, within the term of the court, which expired on December 23, 1933. The court granted the State's motion, and struck defendants' motion, without hearing or determining said motions on the merits thereof.

XI. None of counsel for defendants are attorneys of the State of Alabama, but all reside and practice law in other states of the Union. For the trial of the cases of the petitioners herein, and their co-defendants, defense counsel endeavored to familiarize themselves and did become informed of the general rules and practice of the courts of the State of Alabama. Defense counsel were informed that the statutes of this state required that the motions for new trials must be filed within thirty days. However, defense counsel were not acquainted with the limiting provision that the same must nevertheless be made within the term of the court. Moreover, defense counsel were not familiar with the terms of the Circuit Courts or the time of expiration of such terms.

XII. Defense counsel implicitly relied upon the assurance of the court, as set forth in paragraphs III and VII hereof, that defendants had thirty days within which to file the motions for new trials, and accordingly filed said motions within that time.

XIII. By reason of the reliance by defense counsel on the assurance of the court, as stated, the said motions were filed within thirty days but after the expiration of the term of the court, and notwithstanding such reliance upon the assurance of the court, the said motions were stricken by the court as not being filed within the time required by law.

XIV. The striking of the said motions by the court was to the serious prejudice and detriment of your petitioners, as by reason thereof petitioners are limited to an extent in the questions that may be raised for review by the Supreme Court on appeal.

XV. Your petitioners respectfully submit that the court erred in striking the motions of defendants on the ground that the same were not filed within the required time, and that the requirements of the law with reference to the time of making the motions for new trials were substantially complied with by the defendants, for the following reasons:

(1) The court assured defense counsel that they had thirty days within which to file the motions for a new trial, as set forth above.

(2) Such assurance was made in open court in the presence of counsel for the State, and was not objected to by them at that time or any other time.

(3) The court has the power, within the term of the court, to grant a continuance or extension beyond the term of the court of the time for making motions for new trials.

(4) The assurance given by the court, as above stated, was made within the term of the court, in the presence of counsel for both sides, and operated as an extension beyond the term of the court within which to file motions for new trials.

XVI. Your petitioners respectfully submit that the court should grant a rehearing of the said motions, so that they may be argued upon their merits, for the following reasons:

(1) The State, on February 24, 1934, the day of the argument of said motion, for the first time made known

that it would move to strike said motions, although counsel for the State had ample opportunity to advise defense counsel of their intention so to do.

(2) Osmond K. Fraenkel and George W. Chamlee, defense counsel who appeared for the argument, were taken completely by surprise and were unprepared at that time to meet the contention of the State that the said motions were not made within the required period.

WHEREFORE, Your petitioners pray that the court grant the application for rehearing so that the motions for new trials may be argued and decided upon their merits; for which no previous application has been made.

Dated, March 5, 1934.

Respectfully submitted,

SAMUEL S. LEIBOWITZ
JOSEPH R. BRODSKY
GEORGE W. CHAMLEE
OSMOND K. FRAENKEL
ELIAS M. SCHWARZBART
Attorneys for Petitioners.

IN THE CIRCUIT COURT OF MORGAN COUNTY ALABAMA.

STATE OF ALABAMA

against

HAYWOOD PATTERSON, DEFENDANT.

STATE OF ALABAMA

against

CLARENCE NORRIS, DEFENDANT.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JOSEPH R. BRODSKY, being duly sworn, deposes and says:

I am one of the attorneys for the defendants in the above entitled actions, and make this affidavit in support of motion for a rehearing of the motions for new trials, heretofore stricken by the court on the ground that said motions were not filed within the statutory time.

I attended as one of the defense counsel the trial of both defendants held before Honorable W. W. Callahan in the Circuit Court of Morgan County in the City of Decatur in November and December, 1933.

On December 1, 1933, the jury in the Patterson case returned a verdict of guilty and fixed the punishment at death. I was present in court at that time and at all the times hereinafter referred to, and witnessed all the incidents hereinafter referred to, except as hereinafter stated.

Upon the return of the verdict, Mr. Samuel S. Leibowitz, chief defense counsel, requested that the defendant Haywood Patterson be immediately sentenced. However, the court refused to do this, stating that it did not like to sentence a defendant on the same day the verdict is brought in, and that he would sentence Patterson later; or words to that effect.

Immediately following this colloquy, Mr. Leibowitz requested of the court an extension beyond thirty days within which to file a motion for a new trial for the reason that the transcript of the testimony was necessary in order to prepare a proper motion for a new trial, and that he had been advised by Mr. E. P. Kingsbery, the official stenographer, that the transcript would not be ready in less than a month. Judge Callahan denied Mr. Leibowitz's application, stating in effect: You have thirty days within which to make a motion for a new trial, and after you have made such motion within the thirty day period, you may then apply to me for a continuance for additional thirty day periods in order to file your amended motion based upon the transcript.

All the above stated colloquy occurred in open court, in the presence and hearing of Mr. Thomas E. Knight, Jr., Attorney General of the State of Alabama, and

other counsel for the state, and the assertion of the court that defense counsel had thirty days within which to file a motion was not objected to or commented upon by any of them.

Most unfortunately, the official transcript has omitted from it the said incident and colloquy above referred to. However, your deponent very distinctly recalls the same and avers that he accurately reports it as it occurred.

That this incident and colloquy did occur, is fully confirmed by newspaper accounts of the proceedings made by journalist who were present in court on that day and throughout the trials.

The New York Times of December 2, 1933, carries an account by F. Raymond Daniell, its special correspondent for the trials, under date line of Decatur, December 1st, following a portion of the account reporting the request, above referred to, of counsel for the defense to have Haywood Patterson sentenced immediately:

"'I make it a rule,' says Judge Callahan, 'never to sentence a man if I can help it on the day the jury brings in a verdict. I don't believe in yanking him around. I will fix a day for sentence, however, before you leave, Mr. Leibowitz.'

"The court then informed Mr. Leibowitz that he had thirty days in which to file a motion for a new trial. A request that the defense be given thirty days from the date when the transcript of the testimony taken at the trial is delivered, was denied."

Similar reports were contained in the New York Herald Tribune of December 2, 1933, containing the account of its special correspondent, Mr. Raymond, who attended the trials; also, the December 2, 1933, issue of the New York Daily Mirror, which carried the United Press reports.

Subsequent to the above incident, both while defense counsel were still in Decatur and later in New York City, the above incident was referred to and mentioned among counsel, all of whom were present in court at the time the incident occurred.

Subsequently, on December 6, 1933, the court sentenced both Patterson and Norris, the latter of whom had been found guilty on that day. Directly after sentence was pronounced, Mr. Leibowitz stated to the court that he assumed that the same rule that the court made in the Patterson case with reference to the motion for a new trial also applied in the Norris case. To this, Judge Callahan said, that is right, or words of similar effect.

Your deponent was not in court at the time of sentence of the defendants on December 6, 1933, when the above occurred, but Mr. Leibowitz at that time, on the same day, and again more recently, when the question arose, told me that the above, as stated by me, occurred.

Mr. Leibowitz's affidavit to this effect is not included in this motion solely because, when I telephoned him today to have him prepare such an affidavit for the motion to reargue, I learned that he was actually engaged in the trial of a case and could not prepare the same in time to be taken down this afternoon by Mr. Elias M. Schwarzbart, my assistant, who was leaving on the afternoon train for Decatur with all the papers.

Mr. Samuel S. Leibowitz and your deponent, two of counsel for the defendants, regularly practice law in the State of New York, where they reside; and George W. Chamlee, also of counsel, regularly practices law in the State of Tennessee, where he resides; and counsel have made themselves generally familiar with the practice in the State of Alabama, but are not conversant with all the details and technicalities of that practice. Your deponent and other counsel for the defense were familiar with the Alabama law providing for thirty days after judgment within which to file a motion for a new trial, but they were not acquainted with the limiting rule that the said motion must be made within the term of the court; nor were they familiar with the terms or the expiring days of the terms of the court.

Moreover, counsel for defendants relied implicitly upon the assurance of the court that defense counsel

had thirty days within which to file motions for new trials, as above stated.

Your deponent and other counsel for the defendants are deeply convinced that the statement of the court assuring defense counsel that they had thirty days within which to file motions for new trials, was made solely for the purpose of aiding and guiding defense counsel, who the court anticipated might be strangers to the peculiarities of Alabama practice. The court made this statement directly after denying Mr. Leibowitz's request for more than thirty days' time to file the motion for a new trial, explaining to defense counsel that the motion must be filed within thirty days and then the court might grant additional thirty day adjournments in order to give defense counsel an opportunity to file amended motion based on the transcript.

Ironically, however, the earnest and well-intentioned assurance of the court was completely relied upon by defense counsel, to their detriment, and in the first place, to the detriment of the defendants. Ironically, because defense counsel did rely upon it, the said motions for a new trial were filed within the thirty-day period but after the term of the court, the court then striking these motions on the ground that they were not filed within the statutory period.

The term of court expired on December 23, 1933, as deponent is now advised. The motion for a new trial in the Patterson case was filed on December 29, 1933, and in the Norris case was filed on January 2, 1934, both within the thirty-day period.

Simultaneously with the filing of said motion, defense counsel telegraphed to Judge Callahan, advising him of the filing, and requesting additional time for the purpose of filing amended motion. Judge Callahan wired back in each instance granting additional time. Copies of the telegraphic correspondence are attached to and made part of this motion. Subsequently, the argument of the motions for new trials was set for February 24, 1934.

Simultaneously with the filing of the said motions as above stated, copies of the motion papers were mailed

to Attorney General Knight, and were received by him without objection.

For the argument of the motions for new trials on February 24, 1934, Attorney General Knight appeared for the State, and Mr. Osmond K. Fraenkel, Mr. George W. Chamlee appeared for the defendants. At the opening of the argument, Attorney General Knight made a motion to strike these motions on the ground that they were not filed within the term of court. The court granted this motion. This was the first warning the defense had had that the State would move to strike our motions, not on the merits, but on that technicality. Copies of the motions had been served on Attorney General Knight more than a month and a half prior to that time, and Mr. Knight at no time indicated to defense counsel or filed in court any objection to said motion on any ground whatsoever, although he had ample time to do so. As a result, the defendant's attorneys were taken completely by surprise and were not in a position to answer or overcome the arguments made in favor of the motion to strike said motions. If defense counsel had been advised by Attorney General Knight in advance of the date set for argument,—it could have been done very easily and as a matter of simple courtesy—counsel for the defendants would have been in a position on that day to meet the arguments of the State and would have made it unnecessary to apply, as we are now doing, for a rehearing.

Immediately after the court's decision striking said motions, Mr. Fraenkel telephoned deponent from Decatur and advised him of the developments. Deponent then and there called Mr. Fraenkel's attention to the fact that Judge Callahan had given us thirty days within which to make our motions for new trials, and read to him newspaper articles substantiating the same (as set forth above), and requested Mr. Fraenkel to communicate with Judge Callahan and make known to him these facts.

Mr. Fraenkel then communicated with Judge Callahan. Judge Callahan, according to Mr. Fraenkel, stated that

he did recall some conversation had with Mr. Leibowitz concerning the time within which to make motions for new trials but that he did not allow thirty days within which to do so; that even if he had so stated, he was without power to do so.

As this motion comes up before Judge Callahan, deponent feels confident that with the excerpts from the newspapers hereinbefore set forth and the circumstantial account of the events that took place given in this affidavit, Judge Callahan's recollection will be refreshed on the incidents.

In any case, the statement by Judge Callahan that he recalls having some conversation on the matter of the new trial, at the very least overcomes the presumption of its not having occurred by reason of the bareness of the official record on this point altogether, so that the State cannot now argue that the record is entirely silent on the matter in support of its contention.

Your deponent therefore prays that the application for a rehearing be granted.

Joseph R. Brodsky

Sworn to before me this 1st day of March, 1934.

Fay Siegartel

Fay Siegartel, Notary Public, Kings County.
Kings Co. Clks. No. 1104, Reg. No. 5465
(N. P. SEAL) N. Y. Co. Clks. No. 1087, Reg. No. 58632
Bronx Co. Clks. No. 86, Reg. No. 2958-35
Queens Co. Clks. No. 1973, Reg. No. 7364
Certificate filed in Westchester County
Commission expires March 30, 1935.

POSTAL TELEGRAPH TELEGRAM

December 28, 1933

HONORABLE W. W. CALLAHAN
CIRCUIT COUNTY JUDGE
DECATUR ALABAMA

MOTION FOR NEW TRIAL MAILED TONIGHT AIRMAIL STOP ARRIVE FRIDAY AT DECATUR STOP RESPECTFULLY REQUEST CONTINUANCE PENDING FILING OF AMENDED MOTION ON RECEIPT OF TRANSCRIPT OF RECORD STOP PLEASE REPLY COLLECT

Joseph R. Brodsky

POSTAL TELEGRAPH TELEGRAM

Decatur Ala Dec 29 1933

JOSEPH R. BRODSKY
ATTY BY NYC

MOTION WILL BE CONTINUED TO JANY 27

W W CALLAHAN

POSTAL TELEGRAPH TELEGRAM

January 2 1933 (4)

HONORABLE W. W. CALLAHAN
CIRCUIT COUNTY JUDGE
DECATUR ALABAMA

MOTION FOR NEW TRIAL IN NORRIS CASE MAILED TONIGHT AIRMAIL STOP ARRIVE THURSDAY AT DECATUR STOP RESPECTFULLY REQUEST SIMILAR CONTINUANCE PENDING FILING OF AMENDED MOTION ON RECEIPT OF TRANSCRIPT OF RECORD STOP PLEASE REPLY COLLECT

JOSEPH R BRODSKY

POSTAL TELEGRAPH TELEGRAM

Decatur Ala Jan 4, 1933 (4)

JOSEPH R. BRODSKY
ATTY BY NEW YORK NY

ON YOUR REQUEST NORRIS MOTION CONTINUED JANY 26th

W. W. CALLAHAN

January 10, 1934

Hon. W. W. Callahan,
Justice of the Supreme Court,
Decatur, Alabama

RE: State v. Patterson
State v. Norris

Dear Sir:

I have been retained to handle the motion for a new trial in these matters and am informed that Mr. Kingsbury, the Court reporter, will not have the minutes available until about the 25th. As the matter has now been continued until the 27th I respectfully request you to grant another continuance so that I shall have an opportunity to amend the motion for a new trial after receiving the record. I suggest that you also set a date for the argument of the motion. I would appreciate hearing from you as soon as possible as I would like to make my arrangements accordingly.

Very truly yours,

Osmond K. Fraenkel

OKF/MAG

WESTERN UNION TELEGRAM

January 18, 1934

HON. W. W. CALLAHAN
CIRCUIT COURT
DECATUR ALABAMA

WOULD APPRECIATE HAVING A REPLY TO MY RECENT LETTER REQUESTING FURTHER CONTINUANCE OF PATTERSON AND NORRIS CASES ANSWER COLLECT

OSMOND K FRAENKEL

JAMES E. HORTON, Judge

W. W. CALLAHAN, Judge

STATE OF ALABAMA
CIRCUIT COURT

J. H. GREEN, CLERK
Decatur, Alabama
January 17, 1934

Osmond K. Fraenkel, Counsellor,
c/o Goldsmith, Jackson & Brock,
76 Beaver Street
New York, N. Y.

Dear Sir:

I am in receipt of your letter of 10th inst. informing me that you had been retained to handle the motion for a new trial in the cases of Patterson and Norris pending in the Circuit Court of this county.

These motions have been set for the 26th day of January. However, I have no objections to continuing the cases at your request. I cannot continue them under the law for a period of more than thirty days. So on the 26th I will enter an order for continuance, but I must fix a date.

I am engaged in court out of this county the first three weeks in February. I can hear the motions February 1st, 2nd or 3rd. If not then, then I can hear the motions February 23rd or 24th. Let me know at once which of these dates you prefer, and I will continue to that date.

Yours very truly,

W. W. CALLAHAN (Per NH)

WWC/NH

January 19, 1934.

Hon. W. W. Callahan,
Circuit Court,
Decatur, Alabama

RE: State v. Patterson
State v. Norris

Dear Judge Callahan:

I have your letter of the 17th. In view of the fact that the record will not be available until the 25th and perhaps not even by that time I think it will be better if the motions were set for argument for February 23rd or 24th. I find that the 24th is a Saturday and this would be quite agreeable to me, especially as the 22nd, Washington's birthday, is a holiday here and I will be able to make the trip without unnecessary loss of working days.

May I, therefore, respectfully suggest that the argument be set for the 24th and that defendants be given until February 14th in which to file amended motions. This should give us ample time after receipt of the record providing the same is received not later than February 1st.

Very truly yours,

Osmond K. Fraenkel

OKF-MAG

James E. Horton,
Judge

W. W. Callahan
Judge

STATE OF ALABAMA
CIRCUIT COURT

J. H. Green, Clerk
Decatur, Alabama
January 22, 1934.

Osmond K. Fraenkel, Counsellor,
c/o Goldsmith, Jackson & Brock,
76 Beaver Street,
New York, N. Y.

Dear Sir:

The motions for a new trial in the cases of State against Patterson and Norris, will be continued until 9:30 A.M., February 24, 1934.

Yours very truly,

W. W. Callahan (Per N. H.)

WWC/NH

I certify that I served a copy of this motion on Wade Wright, of Counsel for the State, on March 6th 1934.

Dated Mar 7, 1934.

Elias M. Schwarzbart
of counsel for defendants

Filed in office this Mar. 7, 1934
J. H. Green, Clerk.

JUDGMENT ON APPLICATIONS FOR REHEARING OF MOTIONS FOR NEW TRIALS

STATE OF ALABAMA,)
)
1977 vs.)
)
HAYWOOD PATTERSON.)

MARCH 9th, 1934.

STATE OF ALABAMA,)
)
1977 vs.)
)
CLARENCE NORRIS.)

This cause coming on to be further heard before the Court upon the motions or applications of the defendants for a rehearing of the motions for new trials, came the State by its Solicitor and the said defendants by attorney into open court, and the said motions being now presented to and being duly considered and understood by the court, it is thereupon considered, ordered and adjudged by the Court that the said motions or applications for a rehearing of the motions for new trials be and are hereby overruled and denied.

IN THE

CIRCUIT COURT OF MORGAN COUNTY.

BILL OF EXCEPTIONS

No. 1,977.

THE STATE OF ALABAMA

against

HAYWOOD PATTERSON.

BE IT REMEMERED that upon the trial of the above styled cause in the Circuit Court of the Eighth

Judicial District of Alabama, beginning on the 20th day of November, 1933, present and presiding Honorable W. W. Callahan, Judge of said court, the following proceedings, not otherwise appearing of record were had, to wit:

On the said 20th day of November, 1933, the defendant Haywood Patterson filed in said cause his motion to quash the indictments against him, said motion being also filed by other defendants. The said motion to quash was in words and figures as follows:

MOTION TO QUASH INDICTMENT AND/OR PLEA IN ABATEMENT.

Your petitioners, who are the defendants above named, by leave of the court, do hereby plead in abatement and make motion to quash the indictment and indictments against them jointly and severally, which said indictments are hereinafter more particularly referred to, and aver as follows:

1. The above named defendants and petitioners were heretofore indicted by the grand jury of Jackson County, on or about March 31, 1931, charged in one indictment jointly and in several indictments, for the crime of rape upon a white woman. Thereafter, in April, 1931, your defendants were tried in the Circuit Court of Jackson County and all your defendants were found guilty and sentenced to be executed. Thereafter appeals were taken from the said judgments of conviction and sentences of death to the Supreme Court of the State of Alabama. The Supreme Court of the State of Alabama affirmed the convictions of all the defendants except the conviction of Eugene Williams, a co-defendant, whose conviction was reversed and his case remanded to the Circuit Court of Jackson County.

3. Thereafter appeals were taken from the orders of affirmance of the convictions of all the defendants except

Eugene Williams to the Supreme Court of the United States, and said appeals resulted in reversals of said convictions.

4. Thereafter the defendants moved in the Circuit Court of Jackson County for a change of venue and the case of said defendants was transferred to the Circuit Court of Morgan County for trial.

5. Thereafter the defendant Haywood Patterson was tried in the Circuit Court of Morgan County and convicted and the sentence of death was imposed. Thereafter the defendant, Haywood Patterson, by his attorneys, moved for a new trial before the Honorable James E. Horton, the Judge who presided at his trial, and said motion was granted and the judgment of conviction and the sentence of death set aside. All of the defendants above named are now awaiting trial under the indictment and indictments originally found against them.

6. All of the above defendants are negroes of the African race.

7. Each and every indictment hereinbefore referred to found against all the defendants jointly and severally was and is null and void and without legal effect, and was found and made in a manner and by methods contrary to law, and in that persons of the negro race, duly qualified under the laws of the State of Alabama to serve as members of the grand jury that found the said indictments hereinabove referred to were excluded from the list from which the said grand jury was drawn and from the said grand jury, solely by reason of their race and color as will appear more particularly hereafter.

7. That in the year 1930 or 1931, the duly constituted authorities of Jackson County, prepared a roll of male citizens in Jackson County, from which roll the panel of the Grand Jury, and finally the grand jury which found the indictments against your defendants hereinabove referred to, were selected. That said roll above referred to consisted wholly of white persons and contained the name of no negro citizen who is qualified by

law to serve on grand juries solely by reason of the fact that all qualified negroes were arbitrarily excluded from said roll and have been arbitrarily and systematically excluded for many years from the rolls of grand juries by the authorities designated by law to make up said roll solely because of their race and color.

9. Therefore the panel from which was drawn the grand jury which found the indictments against your defendants, and the said grand jury contained the name of no negro citizen qualified by law to serve on aforesaid grand jury.

10. That at the time when the said roll above referred to was prepared and when the panel of the aforesaid grand jury and the said grand jury were drawn, there were approximately 36,000 persons who were citizens of Jackson County, of whom approximately 34,000 were white and approximately 2,700 were negro.

11. That at the said time when the aforesaid roll was prepared and when the panel of the aforesaid grand jury and the grand jury were drawn, there were approximately 18,000 male citizens of Jackson County, of whom approximately 16,700 were white and approximately 1,300 were negro.

12. That at the said time when the aforesaid roll was prepared and when the panel of the aforesaid grand jury and the said grand jury were drawn, there were approximately 8,000 male citizens of Jackson County over the age of twenty-one and under the age of sixty-five years, who were qualified under the laws of the State of Alabama to serve as grand jurors in Jackson County. That of this number approximately 7,400 were white and approximately 600 were negro.

13. That at the said time when this aforesaid roll was prepared and when the aforesaid panel of the said grand jury and the said grand jury were drawn, there were approximately 600 male citizens of Jackson County of the negro race who were duly qualified to serve as grand jurors and to be enrolled on the aforesaid grand jury roll, and who were eligible for such enrollment and pos-

sessed all of the requirements set forth in the laws of the state of Alabama for services as jurors.

14. That the Code of the State of Alabama (1923), Section 8603, relating to qualifications of jurors provides as follows:

> *"Qualifications of persons placed on jury roll and in jury box.*—The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, but no person may be selected who is under twenty-one or over sixty-five years of age, or, who being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a free holder or householder, his name may be placed on the jury roll and in the jury box."

It is further provided in Section 8606 of the aforesaid Code as follows:

> *"Jury Commission must place name of every qualified person on the jury roll.* • • • The jury commission shall se that the name of every person possessing the qualifications prescribed by this chapter to serve as a juror shall be placed on the jury roll and in the jury box."

15. That at the time when the said roll was prepared and when said panel of the aforesaid grand jury and the grand jury were drawn, there were approximately 600 negro citizens of Jackson County, who were male citizens over the age of twenty-one years and under the

age of sixty-five years and who were generally reputed to be honest and intelligent men, and who were esteemed in the community for their integrity, good character and sound judgment, and who were not afflicted with a permanent disease or physical weakness rendering them unfit to discharge the duties of grand jurors, and who had never been convicted of any offense involving moral turpitude. Among the aforesaid 600 negro citizens there may have been some who could not read English but who notwithstanding possessed all the other aforesaid qualifications and were free holders or householders of Jackson County.

16. That members of the negro race, duly qualified by the laws of the state of Alabama to serve on grand juries and petit juries in the state of Alabama and in Jackson County, have been and are systematically, arbitrarily and in violation of law excluded from serving as jurors as aforesaid solely because they are members of the negro race, that is, by reason of their race and color.

17. That for the last twenty-five years or more the duly constituted authorities of Jackson County having charge of the preparation of the grand and petit jury rolls, and the selection of panels of grand juries and petit juries in Jackson County, and generally of the laws and regulations pertaining to jury service in Jackson County, have systematically, arbitrarily and invariably refused, neglected and omitted to place the names of negro citizens of Jackson County on aforesaid jury lists although the said negro citizens were and are qualified under the laws of the State of Alabama to serve as such jurors and grand jurors; and said refusal, neglect, omission and exclusion were due solely to the race and color of the aforesaid qualified negro citizens.

18. Upon information and belief, no negro has served on any grand jury or petit jury in Jackson County for more than twenty-five years.

19. That the arbitrary refusal, omission and neglect to place the names of qualified negroes on said roll and rolls, as hereinabove more fully set forth were and are to the detriment, prejudice and damage of the defendants above named, and each of them and in violation of the Constitution and Laws of the State of Alabama, and their rights thereunder.

20. That the arbitrary refusal, omission and neglect to place the names of qualified negroes on said roll and rolls, as hereinabove more fully set forth were and are to the detriment, prejudice and damage of the defendants above named, and each of them and in violation of the laws and Constitution of the United States and the amendments thereto, and their rights thereunder.

21. That the defendants have not and do not waive their right to plead in abatement and to move to quash the indictments for the reasons herein set forth, nor for any other reason whatsoever, and do now again plead in abatement and move to quash the indictments found against them.

22. Your petitioners make the original and amended pleas in abatement and motions to quash the indictments, together with the exhibits and affidavits appended thereto heretofore made and filed, and the hearing thereon heretofore had, a part of this petition, plea in abatement and motion to quash, as if fully set forth herein. Hereto annexed are copies of the following affidavits submitted with and annexed to said earlier motion to quash: affidavits of Rev. W. C. Crutcher, F. A. Matthews and Robert James.

DEMAND is hereby made upon the Honorable Thomas E. Knight, Attorney General of the State of Alabama, and the Solicitor in charge of these cases, to reply specifically to each and every allegation herein set forth, within five days after the service of a copy of this petition, plea and motion upon them or either of them.

NOTICE is hereby given that defendants will ask leave of the court to submit further testimony, both oral and written in support of the allegations herein contained that may be controverted by the state of Alabama.

WHEREFORE, your petitioners pray for an order quashing the indictment and indictments aforesaid and for such other and further relief as may be just and proper in the premises, for all of which no previous applications has been made except as hereinabove set forth.

Dated: November 20, 1933.

G. W. CHAMLEE,
S. S. LEIBOWITZ,
J. R. BRODSKY,
Attorneys for Defendants.

(Signed) HAYWOOD PATTERSON,
OZIE POWELL,
WILLIE ROBERSON,
OLEN MONTGOMERY,
CLARENCE NORRIS,
CHARLEY WEEMS,
ANDY WRIGHT,
By G. W. CHAMLEE, Atty.,
Defendants and Petitioners.

State of Alabama,
County of Jefferson, } ss.:

Haywood Patterson, Ozie Powell, Willie Roberson, Olen Montgomery, Clarence Norris, Charley Weems and Andy Wright, make oath in due form of law, that they are the defendants and petitioners herein and that the facts as stated in the foregoing petition, plea in abate-

ment and motion to quash the indictments, are true to the best of their knowledge and belief.

(Signed) HAYWOOD PATTERSON,
OZIE POWELL,
WILLIE ROBERSON,
OLEN MONTGOMERY,
CLARENCE NORRIS,
CHARLIE WEEMS,
ANDY WRIGHT.

Subscribed and sworn to before me this
19 day of November, 1933.

F. L. ERWIN,
Notary Public.
(Seal)

Exhibit "A", attached to said petition, is in words and figures as follows:

Reverend W. C. Crutcher, 1109 Spears Avenue, Chattanooga, Tennessee, makes oath in due form of law that he is a minister of the gospel and has been pastor of St. Elizabeth Baptist Church of Scottsboro, Alabama, for 28 years, and that he has resided in Chattanooga, Tennessee three years and pastors once a month at Scottsboro, Alabama.

He further makes oath that he is personally acquainted with John Sanford, Mark Taylor of Scottsboro, Alabama, L. C. Stapler of of Limrock, Alabama, K. D. Snodgrass of Holly Wood, Alabama, P. Toliver of Hollywood, Alabama, M. F. Timberlake of Stevenson, Alabama, Cam Rudder, Stevenson, Alabama, Hugh Collier, Stevenson, Alabama, A. Joseph, Stevenson, Alabama, Louis Cole, Stevenson, Alabama, Ed. Redd and John Branch of Bridgeport, Alabama, and that these men attend his church and some of them are members thereof and he has been associated with and knows the above named parties

for between 20 and 30 years and that each and all of the above named parties are male negro citizens over 21 years of age and in his opinion under 65 years of age, and male citizens of Jackson County, Alabama, and generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character, and sound judgment and are not afflicted with a permanent disease or physical weakness or unfit to discharge the duties of a juror and on information and belief that none of them has ever been convicted of any offense involving moral turpitude and they are all householders and freeholders and can read the English language.

Affiant further states that he is personally acquainted with John Sanford of Scottsboro, Alabama, and that he is the owner of land, pays taxes and is a householder and as above recited possesses all the qualifications to make him a juror as provided in the Act of the General Assembly of the State of Alabama, and is free from the disqualifications therein prescribed, and that Mark Taylor of Scottsboro, Alabama, owns land, pays taxes and operates a pressing club, and as above stated, is a male citizen of Jackson County and generally reputed to be honest and intelligent and esteemed in the community for his integrity, good character, and sound judgment, and is a freeholder and householder and qualified to perform jury duty under the laws of the State of Alabama.

Affiant further states that L. C. Stapler of Limrock, Alabama, owns a farm and is a married man and can read, write, and as above recited, is a male citizen of Jackson County and generally reputed to be honest and intelligent and is esteemed in the community for his integrity, good character and sound judgment and is over 21 years of age and under 65 years of age and not afflicted and is free from the disqualifications prescribed by Section 8603, Alabama Code 7923, and possesses all the qualifications therein specified for jury duty in Jackson County, Alabama.

Affiant further states that K. D. Snodgrass of Hollywood, Alabama, owns land, is also a freeholder and a householder and can read and write, and as above stated, is a male citizen of Jackson County and is reputed to be honest and intelligent and esteemed in the community for his integrity, good character and sound judgment, and is over 21 years of age and under 65 years of age and not afflicted with a permanent disease or physical weakness and can read the English language and has never been convicted of any offense involving moral turpitude and possesses all the qualifications required by the law of the State of Alabama, and is free from the disqualifications prescribed for jury duty in the State of Alabama.

Affiant further states that P. Toliver of Hollywood, Alabama, is a male citizen of Jackson County, Alabama, and generally reputed to be honest and intelligent and esteemed in the community for his integrity, good character and sound judgment and is over the age of 21 years and under the age of 65 years of age and not afflicted with permanent disease or physical weakness such as would render him unfit to discharge the duties of a juror, and he can also read the English language and has never been convicted of any offense involving moral turpitude, and he possesses all the qualifications prescribed by the law of the State of Alabama for jury duty and is free from the disqualifications thereof as affiant is informed and believes. Affiant further states, that he can vouch for all the parties named in the body of this affidavit, all of whom are negroes, possessing all the qualifications prescribed by the law for jury duty, and also that all of said aforementioned parties are free from the disqualifications prescribed by the laws of the State of Alabama.

(Signed) REV. W. C. CRUTCHER.

Subscribed and sworn to before me
this 17th day of March, 1933.

G. W. CHAMLEE, Jr.,
Notary Public,
Hamilton County, Tenn.

My commission expires December 13, 1935.

Exhibit B, annexed to said petition, is in words and figures as follows:

F. A. Patterson makes oath in due form of law, that he is now a citizen of the State of Tennessee, and that he is well acquainted in Jackson County, State of Alabama, and has been for many years, and that for many years, and on information he avers that for nearly or about sixty years, that negroes have been excluded from all the grand juries and trial juries in the Circuit Courts of Jackson County, and that a system of Government has been adopted there and operated by the officials empowered to administer the jury laws in Jackson County, Alabama, so that negroes were excluded from all juries in the Circuit Courts of said Jackson County, Alabama, for nearly or about sixty years, practically ever since the end of the Civil War or the war between the States when the negroes were emancipated. Affiant further states that all of the defendants named in the indictment in the above styled cause, seven in number (with two who are reputed to be juvenile cases), are all negroes of the African race, and indicted for rape upon the person of a white woman named Victoria Price. That he is advised that the record in these cases show, that for the March Term of the Circuit Court of Jackson County, Alabama, that the Grand Jury was composed of white men only, to-wit: Chas. Morgan, Jas. H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Wash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, E. A. Chambliss, John G. Hicks, Robert E. Hall, Raymond Hodges, C. D. Paul, J. N. Ragsdale and Walter Berry. That this grand jury was called back into special session, for March 30th, 1931, when the indictments were returned against the defendants in this class of cases, and in those above styled cases, as appears from the transcript certified from the Circuit Court of Jackson County, Alabama, to the Circuit Court of Morgan County, Alabama.

That he is personally acquainted with many negroes who are male citizens of Jackson County, Alabama, be-

tween the ages of twenty-one years and sixty-five years, such as Bud Moore, a merchant of Scottsboro, Henry Ross, and Elisha Matthews, and that he knows by reputation and by personal acquaintance many other male negro citizens of said County of Jackson, in the State of Alabama, to-wit: K. D. Snodgrass, Mark Taylor, John Sanford, Travis Mozley, Lawrence Hunter, Oliver Little, with many others; that these men and each and all of them are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, and no one of them is afflicted with a permanent disease or physical weakness that renders him, or them, unfit for the discharge of the duties of jurors, and they can read and write English, and they nor neither one of them has ever been convicted of any offense involving moral turpitude, and are all householders of Jackson County, Alabama. Affiant further states on information, that many threats have been reported in Chattanooga, against negroes and that many of them are afraid to go to Scottsboro, or Decatur, for fear of personal violence, and that Claude Patterson, the father of Haywood Patterson, reported that he was insulted, threatened and cursed at Scottsboro because he went there to attend the hearing of the motion for a new trial for his son, and that affiant does not want to attend court at Decatur for fear of personal violence, to him. Affiant states on information that negroes serve on the Federal Juries in Alabama, and that in his opinion, each and all of the negroes named, in this affidavit, possess all of the qualifications required by the laws of the State of Alabama, and that they are free from all the disqualifications prescribed by the laws of the State of Alabama for jury duty.

(Signed) F. A. MATTHEWS.

Subscribed and sworn to before me
this 25th day of March, 1933.

G. M. CHAMLEE, JR.,
Notary Public,
Hamilton County, Tennessee.
My commission expires October 13, 1935.

Exhibit "C", annexed to said petition is in words and figures as follows:

Robert James makes oath in due form of law that he resides at 31½ W. 20th Street, Chattanooga, Tennessee, that he formerly lived in the State of Alabama and is acquainted with a large number of citizens of Jackson County, Alabama, among the negro race, and that he is acquainted with the following negro citizens of Jackson County: John Sanford of Scottsboro; L. C. Stapler of Limrock; Will Watkins of Fackler; W. T. Talley of Stevenson; Can Rudder, Stevenson; Hugh Collier, Stevenson; A. Joseph, Stevenson; Louis Cole, Stevenson; Ed. Redd, Bridgeport, and John Branch, Bridgeport, and that he has been acquainted with these men for more than thirty years, and that they and each of them are generally reputed to be honest and intelligent men and esteemed in the community for their integrity, good character and sound judgment, and are all male citizens of Jackson County, Alabama, and over 21 years of age, and on information he says they are under 65 years of age, and on information that none of them has ever been convicted of any offense involving moral turpitude and that they are all householders, or freeholders of Jackson County, and can read the English language and are members of the negro race. On information he says that none of them is afflicted with a permanent disease or physical weakness such as to render him unfit to discharge the duties of a juror, and that each of them bears the name of being good citizens and taxpayers of said county. Affiant would appear at court in person, but from reports he deems it unsafe for him to do so and for that reason he sends this affidavit that he can vouch for all of these men.

his
(Signed) ROBERT X JAMES.
mark

Witnessed by ELLA R. MOSER.
Subscribed and sworn to before me
this 24th day of March, 1933.
J. B. WHITE,
Notary Public,
Hamilton County, Tennessee.
My commission expires January 29, 1935.

I hereby certify that I served a copy of this motion with exhibits thereto on Hon. Thomas E. Knight, Jr., Attorney General.

November 20, 1933.

G. W. CHAMLEE.

The State denied each and every allegation of the motion to quash the indictments.

J. E. MOODY, sworn on behalf of movants, testified:

Direct Examination:

I am a member of the Jury Commission of Jackson County, Alabama. I was appointed in March, 1931. I have the custody and control of the jury rolls for Jackson County, for that year, 1930-1931. (Gets two books and brings them in.) That is an old book, and extends back for a number of years. It contains the list of 1931. This roll is alphabetically arranged for each beat or precinct. This was the old jury commission shown above the red lines. We were ordered to empty the jury box in 1931, and over the red lines is what we tore up. The jury you are inquiring about would be above the red lines. That book purports to arrange the names in alphabetical order by precincts.

The witness testified further: The names above the red lines constitute the names of the persons who were on the jury roll from which was drawn the grand jury that found this indictment in this case. They appear that way all through the book; each precinct. It is the names above the red lines that constituted the jury roll from which this grand jury was drawn. This book is the jury roll of Jackson County. "1922" is on the back of the book. I judge that I don't know anything about the

jury roll nor the jury box previous to my time. I don't know when the jury box was emptied before I went into office March, 1931. I do not know when the jury roll was made above the red lines. It starts in 1923. The book is arranged so that it gives the term, the year and the court in which the juror served as a juror. I do not know when the roll from which was drawn the grand jury in this case when that was prepared. I can't tell you when the jury box was emptied before I took charge. The jury roll from which was drawn the grand jury that found the indictment is constituted by the names above the red lines.

I am between 39 and 40 years old, a citizen of Alabama. I have lived in the State of Alabama all my life and in Jackson County all my life. I have lived in Jackson County for the last ten consecutive years. I attended court while I was a student in Jackson County in Scottsboro. I attended jury trials there. I don't remember the first time I ever attended a trial. I have been there as a student and youngster on numerous occasions. I have never seen a negro on a jury in Jackson County in any of these years. I was not familiar with the procedure of drawing a grand jury in March, 1931. I became a jury commissioner in March, 1931, and was appointed by Governor Miller. Three jury commissioners were appointed in 1931. The grand jury that found the indictments against these defendants had been drawn and served in a regular session of the Court and had been excused but not discharged and were called back by the Court in Special Session.

The other members of the jury commission were:

Felix C. Trice, Princeton, Ala., and Ernest Rush, I believe his post office is Henegar, Ala., Route One. These men did not serve before March, 1931. The jury commissioners before March, 1931, were Bass Station and Mr. Stewart of Scottsboro; I don't remember the other, and Kelly Morgan was clerk of the board. There were

supposed to be three. The three appointed the clerk. The clerk was not one of the three. I was elected as President of the Jury Commission. J. D. Snodgrass, Jr., was elected clerk. We kept minutes of the proceedings of the board. They are in Scottsboro, in a book furnished by the county, an official book. That was a book that had been used by the other commissioners before our time. That book is now in Scottsboro in the probate judge's office. After I was elected as president, and we elected Mr. Snodgrass as clerk, we proceeded to search for names, and have the clerk search for names from each precinct and prepare and bring them before us; names of persons to be considered to be put on the jury roll. After we got the names before us, we summoned men from the different precincts to come before us, in order to get information about the names of persons we had. Some of them may have been on the list we had prepared. After we did that, as I said, we summoned men from each precinct in the county and we swore these men, and asked them to take the list that we had prepared and before us, and go over the names, and to give us the names of every male citizen of Jackson County that would be qualified as a juror. These proceedings were entered in the minutes, I think, I am not positive because I don't remember. The secretary signed the minutes in my presence. Minutes were kept of each meeting of the jury board each day. Well, I think it was. I am not positive about that. I don't remember all about the minutes. We kept our minutes and they were properly signed. I don't know whether every official act we done was put on the minutes or not. One time when we filled the box in March, 1931, and then again when we began to fill the box on September 9, 1933, we followed the same procedure that we did back in March, 1931. We kept minutes in September, 1933. I was not familiar with the custom and the method or the manner in which the names were selected for the jury roll for some years prior to March, 1931, the month that I took office. After I became jury commissioner is the first time I knew how, and in what manner the jury

roll was prepared. I had no knowledge or information as to how it was prepared before March, 1931. I did not bring before me personally, as jury commissioner, any individual whose name was to go on that jury roll, since I took office, and question him as to his qualifications. So far as I know, the other two commissioners did not bring before them,—of my own personal knowledge,—any persons from whom they inquired as to their qualifications. The jurymen that I know personally that were added to that jury list are all whites.

Thereupon the witness examined the jury roll page by page and picked out the names of those he personally knew. All the names were those of white persons until the witness reached Precinct 10, page "S". The witness then stated: Page "S", headed by Nathan Sanders, there being on this page 18 names. I know Nathan Sanders, Robert M. Starkey, Albert Starkey, Frank Sharp, Frank Sharp, Thomas W. Starkey, J. William Sharp, Albert L. Starkey, Bob Starkey, Jr., Robert O. Starkey, Sr., Charles F. Simmons, Louis Sebring, J. W. Starkey, J. D. and A. L. Starkey, Charles F. Simmons, James Sragner, Louis N. Sebring, all white. Here on the jury roll is a negro named K. D. Snodgrass that I know around Scottsboro. This K. D. Snodgrass is at Hollywood, on this page.

After recess, examination of the witness, Mr. Moody was suspended and another witness sworn:

C. A. WANN, being sworn in behalf of petitioners, testified:

Direct Examination:

I live in Scottsboro, Alabama, and am Clerk of the Circuit Court and have been for the past five years. I have lived in Jackson County all my life. I attended the

courts often before I became clerk. Twelve or fifteen grand juries, and different kinds of juries have been organized since I became clerk. I never had anything to do with the custody of this jury roll in any way, shape, form or fashion. I am not familiar with the handwriting in this book. I had nothing to do with the selection of the grand jury, during the time that I have been clerk either directly or under order of the court. I make lists of the grand jurrors drawn for a circuit court to put on the minutes. Eleven, maybe twelve different grand-juries have served since I have been clerk. No colored men have been on any of these grand juries during all the time I have been Clerk in Jackson County. I have had occasion to go to court, criminal court on many different occasions. I do not know of one single instance where a negro has served on a grand jury in Jackson County, in all of my experience. I never had the custody of the minutes of the jury commissioners.

J. N. Ragsdale, Charles Morgan, James H. Rogers, J. H. Cox, G. W. Minton, George B. Phillips, William Rash; J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, John G. Hicks, Robert E. Hall, Raymond Hodges, C. D. Paul and Walter Perry, these are the names of men that served on the grand jury, none of these is a colored man. This grand jury was notified to come to court by the sheriff. I handed the sheriff the list. I got that list from the venire drawn by the court, in open court. The venire was drawn from the box. It was Judge Hawkins that drew that list. I was there at the time and in that box was the jury roll, all the jurors, except what already may have been drawn out. There is no special box for grand jurors. They were drawn from a box containing all the names of jurors of the jurors of the county. Judge Hawkins drew out these names you mentioned. He put them in an envelope and handed them to me. Then I wrote out the summonses for the jury.

This witness examined the jury roll page by page, and stated that all the persons he knew were white, except

those in Precinct 21, page "S". As to these he testified as follows: Page "S" has 38 names, beginning with Clem Shelton. I know John C. Shook, John Shubert, Tyson M. Sloan, J. Clyde Spivey, Edward C. Snodgrass, Hunt Stuart, Eli D. Sanders, J. Pontiff Skelton, Claude Spivey, C. W. Shipp, Tyson M. Sloan, John Shubert, John C. Proctor, Robert Shook, C. S. Spivey, Hugh Swain, L. E. Skidmore, T. M. Sloan, John L. Staples, J. Exom Sumner, Robert Shook, John C. Shook, all white. Hugh Sanford,—who is colored.

Mr. Leibowitz: May the record show the page identified is in bound volume from which these gentlemen have been reading, entitled "Jury Roll, 1922, Jackson County" and that immediately following this name, "Hugh Sanford" are two red lines, a portion of the writing being on both lines; that is for the purpose of identification, and below the red lines are the figures 3/20/31, followed by the name "Stewart, Claud".

J. E. MOODY, recalled for further examination.

Re-direct Examination:

I first saw this book (indicating Jury Roll Book of 1922) from which these witnesses have been testifying in March, 1931. I don't remember just exactly how I obtained it. But I did obtain the book. I had the book with me at the time of the jury commissioners' meeting I found some names on that book that the jury official had been writing in there prior to the time I took office.

The following then occurred:

Q. Did you proceed to draw, or have drawn, the red lines across the page, each page after the last name? A. Yes, sir.

Q. Who drew that red line? A. Our clerk.

Q. What is your clerk's name? A. Snodgrass, J. D., Jr.

Q. He drew the red lines? A. Yes, sir.

Q. He drew them in the presence of the Jury Commission? A. Yes, sir.

Q. That is, when you first took office? A. Yes, sir.

Q. You saw him do that? A. Yes, sir.

Q. By "Red Lines" I refer to these red lines (indicating)? A. I think that the first line was drawn with a pencil.

Q. The pencil lines you refer to are on the page Letter "A" and Letter "B", in precinct one? A. I wouldn't be positive about that.

Q. Outside of these two, the others are all red lines and start with the letter "C", precinct one? A. Yes, sir.

Q. Whatever you wrote, or your clerk wrote in this book was below the red lines? A. Yes, sir.

Q. You are sure about that? A. Yes, sir.

Q. Did you do any writing above the red lines? A. No, sir.

Q. In no case? A. No, sir.

Mr. Leibowitz: I am asking that these books be impounded by the court.

Court: All right, sir, they are held by the court.

The witness further testified: I got this book, I drew the red lines across the page and we entered these names after we decided who we would place in the jury box, I mean the names below the red lines. We would make his card, put his name on his card, with his precinct number, and then put his name on the jury roll. All of the writing below the red line was written by my clerk. Some of the writing is mine, and some of it is my clerk's. Our clerk did most of the writing, made the cards. All of the writing on these pages below the red lines, is either in my writing or the writing of my clerk, J. D.

Snodgrass, Jr. I know none of this board now were on the board that preceded us. I did not tell the clerk to put two heavy lines after the last name. He left space there after the last name. We drew in some of the precincts more names than in others, on account of the population; some of the precincts have very little population.

The following then occurred:

Q. See that, see that, see that, wouldn't you say that is written over the red line? A. No, sir, I can't see well enough to tell that.

Q. That is the name of a negro isn't it? A. Mark Taylor, he is a negro, yes, sir.

Q. He is a presser at Scottsboro, isn't he? A. Yes, sir.

Q. I would like to have this page identified?

Court: It is last name above red line in letter "T," precinct one. That gets it.

The witness further testified:

I don't remember whether or not that name "Mark Taylor "was on that list when I drew the red lines. I don't know whether the name "Mark Taylor" has been written in since the red lines were drawn. I can't tell whether that writing is over the red line, by looking at it with the naked eye. I see that there is no space left there. As you go on here and turn the pages I can see that there are spaces left before the red line is drawn.

The following then occurred:

Q. There is the same situation there at that line, isn't there?

Court: What is the last name there?

Mr. Leibowitz: Taylor Cargile.

Court: That name is not in controversy, as I understand it?

Mr. Leibowitz: No, sir.

A. I can't say whether it is or not.

Q. Turn the pages in the book, now you come to the name Cam Rudder, Beat 3, you know that he is a negro at Stevenson, don't you? A. No, sir.

Q. I will ask you to take particular notice of the name Cam Rudder, the writing of that name is superimposed on the red line, and there is no space at all, you see that? A. I can see there is no space there.

Q. Who wrote that name Cam Rudder and when? A. I don't know anything about that.

Mr. Leibowitz: I ask the court to identify page "J," precinct 3.

Court: All right. That contains the name Cam Rudder?

Mr. Leibowitz: Yes, sir.

The witness testified further:

All of these pages (turning pages) have spaces after the last name before the red lines. There is one where there is no space. Bain F. Mitchell, I know Bain F. Mitchell and he is not a negro. I don't know whether that red line is over the ink or under the ink. Bain F. Mitchell is a white man. He has never served on a jury according to that writing. You can tell from the book whenever they served on juries. It is entered here (indicating) when they serve. When a name is taken out of the jury box, and he actually served on the jury, a notation is made that he did serve. In making that extension out there, and there is no entry against that name, that means they are still in the box at the time, and therefore no entry is made. You see we were instructed to empty the jury box after we got our commission; in other words after we were appointed on the jury board, we were instructed to empty the jury box and refill it, by the law, the 1931 Acts. I don't know whether these names above the red line were in the jury box, because we didn't have anything to do with the names above the red line.

The following then occurred:

Q. Do you know Claiborn Parton? A. No, sir.

Mr. Knight: He has served on the jury; it shows that he served in 1928. Please identify that page with Claiborn Parton's name, which is Page "P," precinct No. 3.

Q. (After turning pages.) Here we have Cam Rudder again, he is a negro, isn't he? A. No, sir.

Q. You see the name "Cam Rudder" on this page? A. Yes, sir.

Q. There is no space here at all on page "R", between the red line and the last name? A. No, sir, no space at all.

Q. There are spaces all along here? A. Yes, sir.

Q. Here is a new page, letter "S", district No. 4, last name E. W. Smith, can you tell us whether or not that is under the red line or over the red line? A. No, I can't tell.

Q. Of course, if it turns out that any of these names are superimposed on the red lines, then the names must have been written in there after you entered into office?

Mr. Knight: We object to that. Sustained. Exception by defendants.

Q. (By the court:) Did you see all of these red lines drawn all through the book? A. I can't say that I did, no, sir.

Q. The clerk drew the red lines? A. Yes, sir.

The Court: That book is in evidence, why wade through it with this witness; the book is in evidence and that would just be his opinion about it. Just ask him about the names.

Mr. Leibowitz: Your Honor's suggestion may be entirely practical.

Q. Turn to beat ten, page "S", I call your attention to K. D. Snodgrass, he is a negro isn't he? A. The only K. D. Snodgrass I know of is a negro.

Q. You see no space there do you?

Q. Can you tell us whether the name is written over the red line, or is under it? A. It is right over the red line, but I don't know whether the red line is over the writing, or the writing is over the red line.

Q. Turn to the name Ples Larkin, Page L, District No. 14, he is a negro isn't he? A. Yes, sir.

Q. No space there, is there?

Mr. Leibowitz: I ask that this page be identified.

Court: All right.

(Page "L", Precinct 14, is identified as containing the name Ples Larkin.)

Mr. Leibowitz: We want for specific identification, precinct 10, the letter "K. D. Snodgrass".

Court: All right.

Q. Do you know Daisy Clemons? A. Yes, sir.

Q. He is a white man, isn't he? A. Yes, sir.

Q. (By the court:) Whose writing is that? A. I think it is Kelly Morgan's.

Mr. Leibowitz: May that be offered, letter "C", Precinct No. 21, first page at bottom.

Q. Now, letter "G", page 21?. A. That don't touch the lines at all.

Q. Precinct 21, letter "G", Hugh D. Garland, he is a white man, isn't he? A. Yes, sir.

Q. Now, same Precinct, 21—Letter "M", is a man by the name of Moseley, Travis Moseley, he is a negro isn't he? A. Travis Moseley is a negro, yes, sir.

Q. Part of that writing goes in the red, can you tell whether or not the writing is on top of or under the red? A. I can't see well enough to say.

Mr. Leibowitz: I ask that that page be identified, Page "M", Precinct 21.

The Court: All right.

Q. Now then, Precinct 21, page "S", at the foot of the page is Hugh Sanford, he is a negro, isn't he? A. Yes, sir.

Q. There is no space there? A. No, sir.

Q. Can you tell whether that is written over the red line or not? A. No, sir.

Mr. Leibowitz: I ask that this book be impounded by the court.

The Court: You have asked for that once. It is offered in evidence, and that means that it is here and the court will hold it.

Q. We call your attention to Precinct 24, under the letter "R", there you see the name Roscoe Ryan, is he a negro? A. No.

Q. White man? A. Yes, sir.

Q. Do you know whether his name is under the red line or over it? A. No, sir.

Mr. Leibowitz: I ask that this book be impounded too, Judge.

The Court: Yes, sir.

Mr. Leibowitz: And we ask your Honor to direct the clerk that nobody is to touch this book until the court so orders, until the further orders of the court.

Court: I have already told the clerk to take them in charge. He is a sworn officer and is supposed to know what he has to do.

C. A. WANN, recalled for further examination, continued his examination of the jury roll. All names known to him in Precincts 22 to 28 were of white men.

At this point court recessed until 7:15 P. M. Upon reconvening of court, Mr. Wann's examination was suspended and another witness sworn.

KELLY MORGAN, sworn on behalf of defendants, on motion, testified:

Direct Examination:

I am thirty-nine years old and have lived in Scottsboro for 20 years continuously. Prior to going to Scottsboro, I lived at Langston, across the river, in that same county. Prior to that time I resided in the State of Texas. I first moved into Jackson County about 1911. Since I have lived in Jackson County, I did not visit the court house while court was in session much until the last few years. I did visit it some before I became an official. I never saw a negro on a grand jury in Jackson County. I worked in a drug store up until I was about 25 or 26 years old. I was City Marshall for about a year in 1925 or 1926, something like that. I don't remember the year exactly. From the time I became an official in 1925 or 1926, on up until 1931, in the month of March, I had occasion to go in and out of the courts in Jackson County during the sessions of the criminal court. I have never, in my own knowledge, known of the service of a negro on any grand jury in Jackson County, during that time. No, sir, I don't think I have. I first became officially connected with the administration of the jury machinery of Jackson County the first year after Governor Graves was first elected. He went into office January 14th, 1927. It seems like the jury commissioners were appointed and took office and appointed me clerk. The jury commissioners that appointed me as clerk were Hunt Stuart—he is in court, and W. T. Jenkins—he is in court; and W. B. Wheeler was on the first term. W. B. Wheeler is in Pisgah, Alabama. Mr. Wheeler continued in office about one

year. J. L. Wynne succeeded him. He is not in court. The jury commission consisted of three men. One was supposed to go out in two years and one in three years. That was the procedure, I don't know which one was appointed for a year or two years. Up until Mr. Moody became commissioner, Mr. Stuart, Mr. Jenkins, Mr. Wheeler and Mr. Wynne were the only ones that acted from 1927 to 1931. I was clerk until the Miller administration went in January, 1931. At no time did I take leave of absence and nobody substituted in my place as clerk. After my commissioners took office, and I was appointed clerk, I started acting with them. Minutes were kept of that session showing my appointment as clerk by the commissioners. That entry was made showing I was appointed. I was paid so much a day while in session. The commissioners held three or four sessions from the time of my appointment until the time I completed my time; once each year is what we generally held, under the old law. At that time I don't think there was any specific month. It was owing to how the jury box was; if it was low we refilled it. My duties as clerk of the jury commission were to keep the jury roll, whatever the commissioners instructed me to do, post their names on the roll and on the cards. I did not necessarily have anything to do with the selection of the names in any way. I did sometimes if I knew a man that I thought would be all right. My duties didn't call for that. My duties were to keep the books and the minutes of the jury commissioners, and I posted names, such names as you were directed to post by the jury commissioners on this jury roll which is contained in these two volumes that have been referred to here, and which are in the presence of the court. I never had occasion to go to any persons for the purpose of getting names for the jury roll. The only duties I did perform were to take the minutes of the meetings of the jury commissioners and the posting of names on the jury roll and preparing the list, the list we got the jurors from. I prepared that list under the direction of the jury com-

missioners. I didn't put any names on that list of my own accord. The commissioners told me to put these names on the list at their first meeting. They first instructed me to read the law as to the duties of the clerk, and I did that of course. I posted names at every meeting. The first meeting we posted the names of those that had served the year before. I refer to the jury roll book; I guess that is the book there (indicating). That one (indicating) is, and I believe this one is too. Yes, sir, that is the jury roll. These are the only books I had. I don't know whether they have got any new ones. Those seem to be the books. These two volumes contain all of the precincts of Jackson County. Every year we met we posted names. The minutes would show when we met, where, and how many days we were in session. The last I saw of the minutes, they were in the probate judge's office in Jackson County. They were in a separate book from that, a similar book. It was just a plain book; said "Jury Commissioners' Minutes," if I remember. It may have said something across here (indicating). It had been used several years, and I haven't seen it in a long time. It may have said "Jury Minutes" or something like that, but it was a similar book.

The witness then wrote a sample of the name: "Mark Taylor", "Taylor, Mark, Presser, Scottsboro".

The witness further testified: This writing here, Precinct One, Letter "T", "Taylor, Mark, Presser, Scottsboro", looks kinder like mine. Similar to this. That may be mine. It looks like mine; it has been a good while since I wrote in this book. Yes, I wrote "Scottsboro" nearly alike all the time. They are about the same. It may be my writing. Up until the time that the jury commission that Mr. Moody was on took office, nobody wrote in this book but I. These names (indicating) are all in my writing. Commencing with 1927 to 1931, nobody wrote in the book but I; not that I know of. I didn't keep the book.

The following then occurred:

Q. Will you kindly write on this same sheet for us, "Rudder, Cam, Merchant". A. Yes, sir.

Q. Is that your writing (indicating in book)? A. It looks like it.

Q. Can't you be more definite than that, is that your writing? A. The last time I used that book, I think I wrote with green ink.

Q. Is that your writing? A. I think it is. I wouldn't swear to it. It has been several years since I wrote in this book.

Q. Is that the best you can say? A. Yes, sir.

A. As far as I know, that is my writing, it looks like it.

Mr. Knight: What page is that?

Mr. Leibowitz: Page "R", precinct 3.

Q. Turn now to page "P", in the same precinct, page No. 3, I call your attention to these names, beginning with John P. Payne, farmer, Stevenson, is that name in your writing? A. No, sir.

Q. Who wrote that name? A. I don't know.

Q. Thomas E. Parks, is that your writing? A. No, sir. This is my writing, the notation of him serving.

Q. Parton, Claiborn, is that your writing there in green ink showing that Mr. Parton served? A. Yes, sir, he served before I went in, and I posted his card, this one.

Q. (By the court:) Which is your writing? A. These two, they served in the court before I took office. This one and this one looks like my handwriting. It has black ink. The cards were in the Clerk's office when I went in.

Q. That indicates that his name went in the box? A. No, sir; he had served on the jury and was out of the box.

Q. (By the court:) What is the date of that? A. The Fall of 1928.

Q. (By the court:) Would that indicate that his name was on there? A. Yes, sir.

Q. (By the court:) Have you any independent recollection whether his name was there when you wrote that? A. No, sir.

Q. The name is on the left side of the page, and the next column is his occupation? A. Yes, sir.

Q. And it recites here under the heading "Empanelled", if a man had actually been drawn and served as a juryman, you put in that column, the fact that he has served and in what court? A. Yes, sir.

Q. If a man is not drawn, although his name is in the jury box, his name would be in the left column, but would not necessarily have a notation on the right? A. That's right.

Q. Here's Cam Rudder's name again under the letter "J",—he is listed both under "J" and under "R"? A. That is probably some clerical error.

Q. Is that in your writing? A. Something similar; looks like it, yes, sir.

Q. General Knight called attention to Bain F. Mitchell, a white man, is that your writing there, "Bain F. Mitchell"? A. Yes, sir.

Q. That is your writing, no doubt about that? A. I think that is my writing.

Q. Will you turn to Precinct No. 10, and come to Snodgrass, will you write on this sheet also, write it as it is here "Snodgrass, K. D." A. Here it is.

Q. Is that your writing? A. It looks like it.

Q. Can you look at it and tell us definitely? A. That is the way I make most of my "D's".

Q. Turn to precinct No. 14, and come to the letter "L", Ples Larkin, please write Ples Larkin? A. "Larkin" first or "Ples".

Q. "Larkin" first, and then "Ples". A. All right, here it is.

Q. That is your writing? A. I think it is. It looks like it.

Q. All these names I have asked you about thus far,

are on the bottom line, immediately above the red lines? A. I guess so; I haven't paid any attention to it.

Q. Daisy Clemons, Farmer, in Precinct 21, will you write that name for us? A. Yes, sir (does so).

Q. Is that your writing there? A. Yes, sir, I think it is.

Q. (By Mr. Knight:) Is that your writing there, "Garland"? A. Yes, sir.

Q. Now, just write this name for us, "Moseley Travis"? A. Yes, sir (does so).

Q. Is that your writing there? A. It don't look as much like mine as the rest of them; it may be though. I wouldn't swear that it is.

Q. Suppose you do this for us, write this (indicating) several times? A. Yes, sir (does so).

Q. Please write this for us, Hugh Sanford, precinct 21, under the letter "S", "Sanford, Hugh, Janitor". A. Yes, sir (does so).

Q. Is that your writing? A. I think it is.

The witness further testified: When I went out of office I turned the books over to the probate judge's office and put them on top of some other books. These last names were written in green ink. I had green ink in my pen. Then my connection with the books ceased. I didn't put any of these red lines in here at no time. When I finished with those books there were no red lines that I know of. I don't know any thing about the red lines at all. Those names that I saw immediately above the red lines were in my handwriting. The names that we wrote on the book, the last ones, were written the last time we were in session and I didn't have anything to do with the books after that. After I left the office I haven't seen the books. I think I looked at the minutes last year. I did not write anything on the jury rolls since Mr. Moody became one of the commissioners.

Cross Examination:

When I was clerk of the jury commission of Jackson County, I compiled a list of the male citizens of Jack-

son County between the ages of 21 and 65 years without regard to their status or qualifications. We made a list on other paper, and then the commissioners looked through that list and compiled a list of the male citizens, to go on the jury roll. We selected names from that list that went on the jury roll. That list included all of the male citizens of the county, the list that we got. We selected these names without regard to race or color. We took the list that the board of registers used, the legal voters of the county; we took the Assessor's books of the county, and probably a telephone directory. The legal voters' list gotten out and certified to by the probate judge, I believe that is the three lists we had. With respect to that temporary list, we did not put names on there that we happened to know. We took them from these lists. It was from these lists that the jury commission prepared the jury roll of Jackson County.

Re-direct Examination:

Three lists were the only lists that we used, in the compiling of the temporary list, from which we eventually got this jury roll, the assessor's list contains only the names of people that own property. The next list I spoke of was the list of qualified voters certified by the probate judge. So that, if a man's name were not on either one of these three lists, his name would not appear on the temporary list. That is the only three lists we used; so far as I remember that is all we used. I don't know if these three lists that were used in compiling the temporary list from which the jury roll was eventually formulated, contain the names of all persons,—all males,—between 21 and 65. We examined the poll tax list of the county.

MR. C. A. WANN, recalled to continue his testimony.

Re-direct Examination:

The witness examined the roll, Precincts 30 to 39. Testified that all the names he knew were those of white

persons. There is one negro in the whole list, Hugh Sanford, at Scottsboro, that I know.

HAMLIN CALDWELL, being duly sworn on behalf of defendants, testified:

Direct Examination:

I live at Scottsboro and am Court Reporter for the 9th Judicial Circuit. Jackson is one of the counties of the circuit. I have lived in Jackson County twenty-four years. I haven't missed a session in Jackson County for twenty-four years. I have never seen a colored man on the grand jury in Jackson County. I do not know a great many people in Jackson County. I can go through the books and tell you the names I know. In a great many instances I know the name, but I don't know the individual.

The witness examined the books page by page and testified all the names he knew were those of white persons, except Travis Mosely and Hugh Sanford who are negroes.

There was no cross examination.

J. E. MOODY, recalled to complete examination.

Direct Examination Continued:

All the writing below the red lines was written there, either by me or my clerk or one of the commissioners. After the red line was put there, it was written in. I did that writing. The red line was there when I wrote it, according to my recollection. This date, 3/20/31, Precinct 16, letter "H", looks like my writing, either mine or Snodgrass. When it was written there, I think, the

red line was there on the page. I can't be positive about that, because I don't remember, but I think it was. I wouldn't say that it was or not.

This witness examined the book and in Precinct 21, letter S. He testified: I know Clem Shelton, John C. Shook, John Ashford, Dave Seabolt, Louis N. Sebring, Tyson M. Sloan, J. Clyde Spivey, Frank Shelly, Edward C. Snodgrass, Stewart Hunts, Eli B. Sanders, Thomas E. Smith, J. Pontiff Skelton, Claude E. Spivey, James D. Snodgrass, Jr., C. William Shipp, Tyson M. Sloan, John Shubert, Hugh Swain, L. E. Skidmore, Tom M. Sloan, John L. Staples, Ed. Snodgrass, J. Exom Summer, Cap Sisk, Sam Swafford, Robert Shook, John C. Shook, all white, and Hugh Sanford,—he is a negro. That last name is in Kelly Morgan's writing in judgment. He is a colored man, a negro. The last name before the red line. There is a John Staples, a colored man in Jackson County. That isn't his name right there (indicating), John L. Staples is a white man.

The witness expressed the opinion that Kelly Morgan had written most of the names about which he was questioned.

Cross Examination:

I was appointed jury commissioner by Governor Miller in 1931 and have served continuously on the board. The law requires that I elect a clerk of my board. I have elected a clerk of my board of jury commissioners. He prepared a list of the male citizens of the county between the ages of 21 and 65

Re-direct Examination:

All these names that I have announced are white men, excepting where they were pointed out as colored men. There was one man on there that you said was colored, in the Stevenson precinct, that I know as a white man, you said his name was Rudder, Cam Rudder. I don't know Cam Rudder.

J. H. STEWART, sworn in behalf of petitioners (defendants), testified:

Direct Examination:

I resided in Scottsboro and have resided there practically all of my life. I am forty-eight years old. My business is farming, except I worked as Rural Carrier from 1909 to 1919. I was on the jury commission, I think, from 1928 to 1930. I think I met with them three times, in 1928, 1929 and 1930. That was prior to the administration of Mr. Moody. Our clerk was Mr. Kelly Morgan. The members of our jury commission at that time, were myself and Mr. Stewart. The first session was with me and Mr. Wheeler in 1928, and W. P. Jenkins. That was my first experience as a Jury commissioner. Prior to that time I had attended court in Jackson County, Alabama mighty few times. I did not observe the trial of criminal cases unless they had a big murder trial, or something like that, I didn't go. I have seen a grand jury report. I have seen them go in and out of the courthouse. That is, before I became a jury commissioner, over a period of a good many years, I can't say how many, at least ten or fifteen years. I have never noticed a negro on a grand jury in Jackson County.

Q. It would have been an unusual sight, wouldn't it? A. I guess so, I don't know.

I took office some time in 1928, right after the Governor's inauguration in the early part of the year, I think; I am not sure. The meeting of the jury commission was held in the court house. I took the oath of office administered by the probate judge, Judge Bogart. Mr. Morgan was our secretary and he took the minutes. He was the man who was authorized to place in this book the names of citizens who were to go on the jury roll. He done all the writing on our books, including the jury roll. I don't think Mr. Morgan had any authority to write any names on these books other than those I instructed him to write on there. I don't know whether he did or not.

The following then occurred:

Q. Did you give him any authority to write names thereon, other than those you and your fellow commissioners instructed him to enter? A. I don't know that there was anything said about that. I didn't give him any instructions.

Q. Did the other commissioners give him such instructions in your presence? A. I can't say.

Q. In your presence? A. None that I know of.

Q. All of the names in these books were names that either you or your fellow commissioners, Mr. Wheeler and Mr. Jenkins, instructed Mr. Kelly Morgan to enter on these rolls, that's right, isn't it? A. Yes, sir, I think it is.

The witness further testified:

I did not prepare a list having all the names that I was going to propose to the jury commissioners to put on the jury roll as a jury commissioner. I might have suggested names on this list. I don't know whether I did submit any names at the first meeting of the jury commissioners, names to be entered on the jury roll, by virtue of my authority as a jury commissioner, I don't remember. There is no way for me to refresh my recollection about that. That has been four or five years ago, and I have paid no attention to that. I don't remember if either of the other commissioners suggested any names to be entered upon this jury roll. The commission consisting of three men as commissioners, did not vote on each of the names, as to whether or not that name should go on the jury roll. The procedure that we followed in putting a man's name on the jury roll, was: Mr. Morgan prepared a list. The list was there, and maybe more than one list. Mr. Morgan prepared one or more lists. Mr. Morgan was appointed clerk at the first meeting of the jury commission. He did not have that with him then and there before we appointed him, a prepared list. He prepared a list then and there. At the first

meeting of the jury commission he sat down and prepared a list in my presence. He prepared the list while I was present. We usually held over from eight to ten days, successive days. He was at work on it over several parts of days, successively. I can't tell what day we did put names on the books. We commenced after we had gone through the list and got what was qualified as jurors. The lists were those that Mr. Morgan prepared. I know where he took these lists from. He got them from the polling list and the tax books. I am not sure we had the tax books before us at the time we made up these lists; I don't remember. I don't remember what we did; we got these names from the registration list and the polling list. The registration list is a list of the voters. That is one of the requirements before they can vote; they have to be registered. These three sources were partly the ones from which we obtained these lists. I don't remember the other sources now. I have forgotten. All that I did in connection with my duties, was to take the list submitted to me by Mr. Kelly Morgan, and cull from that list such names as I finally placed on the jury roll. That's about all as far as I remember. It's been so long ago that I don't remember now. That is my best memory.

The following then occurred:

Q. Do you know a negro by the name of Mark Taylor, a presser? A. Yes, sir.

Q. Do you know whether his name was put on the jury roll? A. I don't know whether it was or not. I have forgotten.

Q. Did the name of Mark Taylor ever come up before you? A. I don't know whether it did or not, I have forgotten.

Q. If the name of Mark Taylor is on that jury roll, if there has been no forgery or crime committed, his name would have been put on that jury roll by your order?

Q. Do you know a negro named Cam Rudder at Stevenson? A. I don't believe I do. I can't recall it if I do.

Q. Do you know a negro named K. D. Snodgrass at Hollywood? A. Yes, sir.

Q. Do you know him personally? A. Yes, sir.

Q. Would you say that he is qualified as a juryman? A. I don't know.

Q. I will go to this name K. D. Snodgrass, is he qualified to serve on a jury? A. If we put him on that roll he was qualified. I don't know whether we did or not. I don't recall putting him on there.

Q. There is Mr. Snodgrass' names right there, precinct No. 10, Letter "S", do you say that he is a qualified juror?

Court: You needn't answer that.

Mr. Leibowitz: We reserve an exception.

Q. Do you know Ples Larkin of Larkinsville? A. No, sir.

Q. Do you know Travis Mosely of Scottsboro? A. No, sir.

Q. You live in Scottsboro? A. Yes, sir.

Q. Do you know Hugh Samford, Janitor, a colored man, a janitor at Scottsboro? A. Yes, sir.

Q. Known him a long time? A. I can't say how long I have known him. I know him.

Q. What qualifications did you impose on the names you did put on the jury roll? A. A man had to be honest; he had to be esteemed in the community in which he lived for his integrity and good character and be a man of sound judgment.

Q. Is that all? A. We had the law there before us.

Mr. Leibowitz: We move to strike the answer. Sustained.

Q. Is that all? A. I have forgotten all that law, I don't know.

Mr. Leibowitz: We move to strike that out. Overruled.

Q. Now these people whose names are on this jury roll, are not personally known to you are they? A. No, sir, not all of them.

Q. Did you pass upon each particular name at your meeting, take up a name and vote on it? A. No, sir, I don't remember. I wouldn't say.

Q. You don't remember what the procedure was at all? A. No, sir, not all.

Cross Examination:

I was appointed by Governor Graves as a member of the Jury Commission. I assumed office in 1928. 1928, I think was the time. I was a member of the jury commission that compiled the jury roll, the roll of jurors of Jackson County, from which roll, a grand jury of Jackson County was selected which returned indictments during the month of March, 1931. August 18th, 1930 was the last time I saw these books or the jury box. That is when we filled the jury box the last time before I went out of office. After I left office, I left this jury roll here, and until somebody changed that, that was the jury roll from which juries were drawn.

The following then occurred:

Q. Did he submit to you such a list? A. He made out a list.

Q. So far as you know, or were able to ascertain, did that contain names of the male citizens between the ages of 21 and 65 years?

Mr. Leibowitz: We object to that. Overruled.
Mr. Leibowitz: We reserve an exception.

Q. So far as you know, did the list that Mr. Morgan prepared contain the names of the male citizens of Jackson County?

The Court: Subject to jury duty?

A. I would think so. It would be almost impossible to get the names of all the male citizens without taking a census, and we didn't have the census papers.

Q. So far as you know did that list incude white and colored persons?

Mr. Leibowitz: We object to that.

Court: If he knows, he can say.

A. I don't know.

Q. Do you know whether or not the list that Mr. Morgan submitted to you contained both white and colored persons?

Court: Do you know whether it did or not?

A. I wouldn't say.

Q. Did you examine that list submitted to you by Mr. Morgan? A. Some, yes, sir.

Q. I will ask you this question, did you put on that roll from the list submitted to you the names of all male citizens between the ages of 21 and 65, regardless of race or color, whom you thought possessed the qualifications of jurors?

Mr. Leibowitz: We object to that. If he is permitted to ask that, I have a right to examine specifically. I submit that is an improper question.

The Court: I believe I'll overrule the objection.

Mr. Liebowitz: We reserve an exception.

A. Mr. Morgan made out that list—

The Court: I think I can shorten this whole business. Mr. Stewart, you had various lists or data before you?

Witness: Sure.

Court: Containing names?

Witness: Yes, sir.

Court: Now, did you know all of these men?

Witness: No, sir.

Court: You didn't know them all?

Witness: No.

Court: Now then, did you leave off any man, or did you instruct Mr. Morgan, the clerk, or did the jury commission who sat in your presence, and with you,—did the jury commission or you ever instruct Mr. Morgan, the clerk of the jury commission, to exclude any person from the roll of jurors for Jackson County, on account of his race or color?

Mr. Leibowitz: We object to the court asking the question.

Court: The objection is overruled.

Mr. Leibowitz: We respectfully except.

Witness: That was never discussed, race or color was never discussed, neither was religion, political connections, fraternal connections, and the like of that was never mentioned at all.

Q. Can you state whether or not that jury roll contains the names,—the jury roll prepared by your commission,—contains the names of white or colored persons, that is whether it contains the names of any colored persons?

Mr. Leibowitz: We object to that.

Court: You are speaking of these rolls here?

Mr. Knight: Yes, sir.

Court: I'll let him answer if he knows.

A. I don't personally know all of the names on the book.

Q. That isn't responsive; that isn't an answer, he has been asked whether or not names of colored persons were on the jury roll?

Court: Do you know whether there is or not?

A. No, sir, I don't know whether there is or not.

Court: I want to ask him again, and you both can object if you want to, then we will forget it. When you discussed this preliminary list and data you are talking about having before you, when deciding to put names on this jury roll, do you recall whether or not the name of any colored voter was discussed and his qualifications, and whether or not after discussing him, his name was not put on the jury roll?

Witness: No, sir, I have forgotten.

Court: Or was put on the roll?

Witness: I don't know whether there was or wasn't.

Court: You just don't remember?

Witness: No, sir.

Court: Do you recall any discussion while the board was in session about whether you would put the names of colored people on the roll, or keep them off?

Witness: That wasn't discussed among us, the best I remember. We didn't automatically or systematically exclude anybody.

Mr. Leibowitz: We move to strike that out as not being responsive.

Court: I reckon in a way it is responsive, I will let it stand.

Mr. Leibowitz: We reserve an exception.

Q. You considered every man on the list submitted to you by Mr. Morgan? A. The Board did, the best I remember, yes, sir.

Re-direct Examination:

Q. Did you strike any names off the list? In other words Mr. Morgan came in with the list, and recommended this man, or "We don't want this man", or did any of the commissioners say that? A. You mean off the temporary list?

Q. Yes, sir. A. I think so.

Q. In many instances? A. Well, I can't tell about that. I guess we did, but it has been a long time ago, and I paid no particular attention to it.

Q. You said in answer to his Honor's question, that the question of a man being colored wasn't discussed,—in other words no mention was made of that? A. That is my recollection.

Q. Did you have in mind at that time, when you became a jury commissioner, that in all the years you had been a resident of Jackson County, you had never seen a colored man serve on either a grand or petit jury?

Court: You needn't answer that question.

Mr. Leibowitz: We want to respectfully except.

Q. Did you, yourself, have brought before you, at any time, either you, or you and the other commissioners, any colored person in Jackson County for the purpose of inquiring into his qualifications as a juror,—did you, yes or no? A. I don't think so, as far as I know. I don't remember it if we did.

Q. (By the court:) Did you put, or did you direct the name of any one put on this roll, did the board know whether or not the name,—the person,—was white or black in every instance,—in other words did you know the names and know the men that went into that roll? A. I didn't know them all, no, sir.

Q. Had it been a custom in Jackson County for many years prior to the time when you became a member of the jury commission, for negroes not to serve on the juries? A. I don't know what the custom was.

Q. You know what your experience had been, do you not?

Court: He has testified to that.

Mr. Leibowitz: What?

Court: That he lived in Scottsboro and had never seen a negro serve on a jury. He answered that at the beginning.

Q. Did you not, by reason of the fact that you had never seen a negro on a jury, did you not have that in

mind that it was customary,—when you assumed office as a jury commissioner,—not to select any negroes on the jury roll which you were to prepare?

Court: You needn't answer that question.
Mr. Leibowitz: We except. That's all.

Re-cross Examination:

Q. He asked you if you ever summoned any negro and questioned him as to his qualifications as to jury service, did you ever summon any white men and bring them before you and examine them as to their qualifications as to jury service? A. The ones we put on there?

Q. (By the court:) He wants to know if you brought these folks before you and examined them? A. No, sir.

Re-direct Examination by Mr. Leibowitz:

Q. Did you ever inquire from any negro living in a negro section of the various communities, making up Jackson County, if there are such communities,—did you ever inquire from anybody in such community as to whether or not there were any negroes in those communities that had the qualifications that the commissioners were looking for,—did you ever make such inquiry? A. I didn't personally myself.

Q. Do you know of anybody that did, yes or no? A. No, I don't know.

Q. Is there any negro community in Scottsboro? A. They are scattered all over town.

Q. Is there any town in Jackson County with a negro community, where there is a negro section? A. I don't know.

Q. Do you know of anybody connected with that jury commission that made independent investigation among the negroes to ascertain whether or not any of them were qualified as jurors? A. I didn't myself. I don't know what the rest of them did.

Q. (By the court:) Are you pretty well acquainted all over that country? A. Well, I don't know that I am.

Q. Do you know many negroes there? A. There is several negroes there, I don't remember what the census was. Take south of the river there is practially no negroes living in there.

Q. How about north of the river? A. Along the railroad there is several negroes, at Scottsboro, Hollywood, Stevenson and Fakler.

Q. Now, among these negroes that you know, and have known for many years, is there one negro that you know that is qualified as a juror, and was so qualified when you assumed office in 1928? A. I don't know.

Q. Can you state the name of any negro that you know—

Court: He has answered that question. Ask him something else if you want to.

Q. Let me put the question, name one negro who you would say is qualified to have his name on the jury roll?

Court: You needn't answer that question. He has already said that he didn't know. When he don't know he don't know. (To witness:) You can stand aside. (To Mr. Liebowitz:) You can have an exception.

Q. Just a minute, Judge: What I had in mind was this, Mr. Commissioner, you say that you have known for a number of years, certain individual negroes, is that right? A. Yes, sir.

Q. I dare say if you took time to think about it, you could name some of them,—I won't press you on that,—having these negroes in mind, can you tell us the name of one negro whom you are prepared to say met the qualifications imposed by law, at the time you were jury commissioner, can you mention any such? A. I don't know.

Defendants' Counsel then stated: In addition to the original grounds set forth in the motion to quash, heretofore referred to, we would like to add another ground, and that is this: that the indictment was found by a

grand jury that was drawn from a jury roll in which there was fraud in the compiling thereof; that there was fraud in compiling the list from which the said grand jury is purported to have been drawn, therefore such indictment is null and void. That is an added ground that we would like to add to the grounds mentioned in the papers. The State again denied each and every allegation of the motion to quash the indictment.

Defendants, then offered in evidence, the testimony on the former trial, before Judge Horton, on the same motion to quash the indictment. It was agreed between counsel for defense and the State that only the evidence was offered and Judge Horton's rulings were not presented for review. And this evidence was read to the court and was in words and figures as follows:

The affidavit of Marie B. Owen, Director of the State Department of Archives and History, was offered as follows:

State of Alabama,
Montgomery County, } ss.:

I, Mrs. Marie B. Owen, Director of the Alabama State Department of Archives and History, do hereby certify that said department is designated as an official depository for all government documents, including the reports of the United States Census Bureau, and further certify that the 15th Census of the United States—1930, Population Volume 111—Part 1, Reports by States—Alabama—Missouri, Composition and Characteristics for Counties, Cities and Townships, on file and of record in said Department, at the Capitol, in the City of Montgomery, pages 130 and 135, respectively, discloses the following information:

Jackson County—Total population, 36,881; Males, 18,801; Females, 18,080; Color White, 34,192; Color Negro, 2688.

Morgan County—Total population, 46,176; Males, 23,122; Females, 23,054; Color White, 37,865; Color Negro, 8,311.

(Signed) MARIE B. OWEN,
Director, Alabama State Department
of Archives and History.

Subscribed and sworn to before me this
the 22nd day of March, 1933.

(Signed) Mrs. VONCILE B. SAYERS,
Notary Public,
Montgomery County, Ala.

STATE OF ALABAMA,

DEPARTMENT OF STATE.

I, Pete B. Jarman, Jr., Secretary of State, of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that, as disclosed by the records of this office, Mrs. Voncile B. Sayers was, on October 22, 1932, duly commissioned as a Notary Public in and for the County of Montgomery for a term of four years. I further certify that by virtue of such appointment she is authorized by law to administer oaths, take acknowledgments and proofs of instrument in writing, and I further certify that her signature to the instrument hereto attached is, to the best of my knowledge, information and belief genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State,
(Seal) at the Capitol, in the City of Montgomery, this 22nd day of March, One Thousand Nine Hundred and Thirty-three.

(Signed) PETE B. JARMAN, JR.,
Secretary of State.

J. S. BENSON, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

I am in the newspaper business. I live in Scottsboro, in Jackson County, State of Alabama. I have lived in Scottsboro about fourteen years, in the county about thirty-five years. I followed the Court proceedings at Scottsboro with regularity as editor of the Progressive Age. During all of the years I have lived in Scottsboro and Jackson County, and in the courts I have never known of one single instance where any negroes were put on the jury roll, or on the roll from which the Grand Jury was drawn, or from which the Petit Jury was drawn. I never heard of it or never noticed one. Well they haven't called them.

Counsel for the defendants asked the witness the following question:

Q. Has it been the practice, has it been the uniform practice?

The State objected, that it is clearly a conclusion of the witness. The Court sustained the objection and defendants' counsel excepted.

The witness further testified:

I know some of the persons that were in authority to draw the juries in the years 1930 and 1931. I think Mr. Jeff Moody was chairman of it, and I don't know but I think Mr. Rush is one of them, and there is one other I don't know. I never talked to Mr. Jeff Moody about the jury question. I never talked with them any pertaining to negroes serving on juries, being put on jury rolls. I never heard it much. I never discussed it with either of them. I have with me a census of Jackson County. The total population is 36,881; you want the

population, all over twenty-one years old, 8,801; 666 negroes, just male. The male population over twenty-one was approximately 8,801; 8,136 whites.

Cross Examination:

I am the editor of the Progressive Age. I never served as a jury commissioner for Jackson County or had anything to do with the making of the jury rolls for Jackson County. I had nothing to do with selecting the people who were qualified to serve as jurors in Jackson County. I never served as a jury commissioner when they were selected. I never saw, nor do I know, nor can I tell whether or not there are negroes in that jury box now or not. I do not know as a matter of fact, within my own knowledge, whether or not there are negroes in the jury box and in March, 1931, there were not any negroes in the jury box of my own knowledge. I have not been to Mr. Chamlee's office in Chattanooga. I haven't been to Chattanooga to confer with Mr. Chamlee. I have never seen Mr. Chamlee in the office. I was with him at the time of the motion for a change of venue. I was getting some news items that is all.

Re-direct Examination:

I know General Chamlee. I never heard of any other human being in the State of Alabama who I ever talked to who ever knew of one single negro who ever served on any jury or as getting any call for jury duty.

Re-cross Examination:

The following then occurred:

Q. Do you know of any negroes in Jackson County qualified to sit on a jury?

Mr. Leibowitz: I object to that question because it is calling for a conclusion of the witness.

Court: Sustain the objection.

Attorney Genral Knight: Here is a man who has given us the census. Here is a man who has testified he hasn't seen negroes on juries in Jackson County, and now I ask him if he knows of any that possess the qualifications.

Court: You haven't shown he knows the qualifications.

Attorney General Knight: "The Jury Commission shall place"—these are the qualifications of the jurors. The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character, and sound judgment, but no person may be selected who is under twenty-one or over sixty-five years of age, or who is a habitual drunkard, or, who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder, his name may be placed on the jury roll and in the jury box." Do you know of any negroes in Jackson County possessing those qualifications.

Mr. Leibowitz: We object. There is no evidence here your Honor that Mr. Benson was ever charged with the duty of examining any of the colored people as a jury commissioner.

Court: Overrule the objection.

A. I know some good negroes as far as negroes go.

Q. Do you know of any that possess the qualifications prescribed by the statute I just read you?

Mr. Leibowitz: Same objection.

Court: Overrule the objection.

A. I think that sound judgment would get it, I think that sound judgment part, there are some negroes with good reputation there, just as good as anywhere.

Q. The question of their judgment? A. I don't think there are.

Re-direct Examination:

I don't know every negro in Jackson County, nearly all of them I suppose. They have no doctors in the entire Jackson County, not a doctor. I know some ministers. I would not say his judgment is as sound as the average citizen of the community. I base my opinion on so far as sound judgment. I don't think they have been trained and have studied that proposition, I might say the same thing about women, I don't think they have been trained for it; the negroes I know haven't been trained for jury duty in our county there, and I don't think their judgment—you could depend on it all together, you might depend on it in some cases but they haven't made any study of jury duty and law and equity and justice and so forth, that is just my opinion.

The following then occurred:

Q. Would you say a man who is illiterate, and could not read and write English, and had never gone to school, would you say his judgment is any less sound—

Attorney General Knight: I object.

Q. Would you say his judgment is less sound than a man who has gone through a divinity college?

Attorney General Knight: I object.

A. We haven't a divinity.

Court: Sustain the objection.
Mr. Leibowitz: I except.

The witness testified further: I don't believe there are any negroes in our country that I would risk on a case where I was interested in it, where there is any law and justice and so forth. We have no divinity students up there—that is colored. We have a minister there. I don't know whether he is a doctor of divinity, just a common negro preacher, they fill their place honorably and all of that. They have studied the gospel, I suppose. Some of them has got education enough. But, as a matter of fact, I think they wouldn't have the character. I mean they wouldn't be honest. They will nearly all steal. I know some of them that wouldn't. I wouldn't exclude any of them. I am talking about negro ministers. Some of them will steal. I know one or two that wouldn't steal. I don't know whether I could call any right now. There are negro merchants in Jackson County. I believe Bud Moore is one. He has a little store there, I don't know, there is one or two little merchants at Stevenson, that is all I know. Bud Moore is a pretty good negro. I don't know whether he is honest. I have never caught him stealing. I would give him the benefit of the doubt. That Bud Moore, he is a reputable man, I think. I don't know whether he knows me or not. I know him. Just passing around, he has the reputation of being honest. I never discussed questions of natural affairs, or state affairs, or public questions, with him. I never talked with him on public affairs except at public meetings, or something like that, where we all met in clean-up campaigns, or something like that, and might have heard him say something. He just followed what we told him to do. I know of my knowledge Bud Moore isn't a man of good sound judgment and intelligence and doesn't come within the qualifications of that statute; he isn't as a juror. I don't know whether he is a man of sound judgment. I am excluding Bud Moore from that category. As a juror, I don't know much about Bud Moore.

The following then occurred:

Q. So far as you know Bud Moore may be perfectly qualified under that statute to serve as a juror, yes or no? A. No.

Q. You don't know.

Attorney General Knight: He said no, he didn't say he didn't know.

Q. He wouldn't be qualified because he is a negro, isn't that so, yes or no? A. Because he isn't trained.

Q. What do you mean by trained? A. He never studied and made it his life.

Q. How many men have you ever known in Jackson County that ever studied to be jurors?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

The witness further testified:

I mean studied justice and such as that. They talk it at the cross roads store, and talk it everywhere, and go to Court and fill the Court House. I mean white people. I see negroes in this court room. I have seen them at Scottsboro, negroes in the Court House. I have heard them talking about cases in the Court House.

That fellow A. Joseph has been a merchant up there. I wouldn't say he is now or not. He used to be for several years. He lived in Stevenson about forty-five years. He is a family man and a preacher too. I don't know if he is an honest man. I wouldn't say he is dishonest. I have talked to him a little. I think he has been in my office about getting minutes or something that way printed, something like that. I could be mistaken about him being the man. I just spoke to him and he answered my questions intelligently. I don't think there is anything wrong with his mentality. And he has sober judgment in some things. I have never seen him drunk.

I don't know that he is suffering from any venereal disease or permanent disease that might affect his mentality. He was a man of good reputation under sixty-five in the years 1930 and 1931. I am pretty sure that he was. I don't think he was a tax payer, but he had a family. I never heard of him being convicted of any crime. I don't think he would know anything about jury duty. I don't think he would make a good juror. I don't know any other merchants—I know some of them fellows that come in. I know no colored doctors in Jackson County, never was one there, there was a quack doctor there but we put him in jail. I do not know any real good legitimate negro doctors. There are no negro lawyers there.

I know negroes in Jackson County that own real estate. I think that fellow Stapler does. I know him. Speak to him about different matters. He answered my questions pretty intelligently. I imagine he is over sixty-five years old. I would knock him out. Not altogether just because he is a negro, that is partly it. The fact is, he is a negro and hasn't had that training, about his judgment being good.

The following then occurred:

Q. Mr. Benson, would you say this man here that owns real estate has had as much training—I want to know whether this man you just referred to, this negro, who is a real estate owner, and which you have talked to, whether he has had just as much training for jury duty as the man who was first called to serve on his first jury? A. No, sir, he hasn't, I never served on any jury in my life.

Q. Your business takes you into court as a newspaper man? A. Yes, sir.

Q. Wouldn't that apply to the average body of citizens? A. No, sir, a good many never served on a jury but they have studied and make good jurors.

Q. You have seen jurors who have never served on juries and who have never been in court rooms before?

Attorney General Knight: I object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

The witness further testified: I think that man Timberlake, he has some property. He is a man of good reputation. A decent citizen and law abiding. I think he is about sixty-five. I have never known him to be drunk; never seen him drunk. I never heard he has had the reputation of being a drunkard. As far as I know he is well thought of in the community in which he lives. A man of sound judgment in the community, as standards go there among the negroes. I will exclude him too.

The following then occurred:

Q. Simply because he never served on a jury and never had experience at jury duty?

Court: I don't think that would be a proper question.
Mr. Leibowitz: I except.

Q. On what basis do you exclude him. A. Well sound judgment.

Attorney General Knight: We object.
(No ruling.)

Q. Have you ever tested his judgment, yes or no? A. (No answer.)

Q. What is there about his judgment you find fault with, this particular man's judgment? A. I don't know him much.

Attorney General Knight: What Mr. Benson might find fault with a person's judgment is not the question, it is whether he is esteemed in the community.

Q. Do you know the definition of esteemed?

Court: I think the question should be confined to their qualifications as jurors.

Q. Speaking about his judgment, because the statute refers to his judgment, sound judgment, what is there about that man's sound judgment that you questioned? A. I don't know about that man.

Q. From what you know he may be a man of sound judgment, isn't that so? A. Oh, possibly he could be, but I don't think so.

Q. You wouldn't say one way or the other. A. About Timberlake, no.

Q. You wouldn't say about Timberlake that he wasn't qualified, under that statute the Attorney General read to you, to serve on a jury? A. I don't know much about Timberlake?

Q. You wouldn't say he wasn't qualified? A. I would say I wouldn't think he would be qualified.

Q. Because he is a negro?

Attorney General Knight: We object.

Q. I want to know why you say that?

Court: Ask him the question in regard to his qualifications.

Q. What is there about that man's sound judgment you complain of? A. I couldn't tell you.

Attorney General Knight: I object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

The witness further testified: I don't know of any more that own property. I know some negroes in that County over twenty-one and under sixty-five. I know

Mark Taylor. I know him about as well as any. I have known him ten or twelve years. He is a dry cleaner there. Deals with people, people bring their clothes to his store and have them dry cleaned. He has the reputation of being a good cleaner. I don't know as I ever heard his honesty discussed. I never heard of him being arrested and convicted or ever being in jail. He is a pretty good negro. Nobody ever complained about his honesty. I never heard of his ever been charged with stealing. I think he is a married man. I don't think he has any children. He was living there when I went there, he has been there about fifteen or sixteen years. He can read and write. I do not know what education he has had. He came from up in your part of the county I think. He went to school there. He speaks pretty intelligently for a negro. You can tell the difference in the way they talk. I have talked to him about church of course, and such as that. He would ask me advice about things in the church over there. I am not a preacher; he would get me to help them out. He is a religious man and a man faithful to his church.

Re-cross Examination:

I don't know whether Moore, Joseph, Stapler and Timberlake are in the jury box. I never looked to see in the jury box in my life.

J. E. MOODY, witness called on behalf of the defense after first being duly sworn testified as follows:

Direct Examination:

I am a resident of Jackson County. President of the Jury Board. I had no official position in 1930 except a farmer. I was appointed March, 1932. I was not a jury commissioner in 1930, or had anything to do with the selection of jurors in 1931, nothing at all.

The following then occurred:

Q. Do you know Charles Morgan of Jackson County? A. Whereabouts does he live?

Q. He was on the Grand Jury that indicted these defendants, member of that Grand Jury. A. I know one Charles Morgan.

Q. Is he white? A. Yes, sir.

Q. Do you know H. H. Rogers? A. Where does he live?

Q. I don't know, he served on this Grand Jury, do you know him? A. I don't know as I do.

Q. Do you know J. H. Cox? A. I think so.

Attorney General Knight: We object. We have gotten to one of the questions that has been carefully decided by practically every case the gentleman read. He is calling a list of names, as I understand, of the Grand Jury, and attempting to prove they are white. The Courts have repeatedly held that a defendant is neither entitled to members of his race on a Grand Jury or Petit Jury. The only thing that this inquiry should be assigned to is a systematic exclusion of negroes from both.

Mr. Leibowitz: The Attorney General is quite right, I am not seeking to prove the point he is calling to the Court's attention, I am offering to prove this Grand Jury was all white, and will proceed from that that every man that was on the jury roll was white.

Attorney General Knight: Why prove that every man on the Grand Jury was white?

Mr. Leibowitz: Will you concede that?

Attorney General Knight: I don't concede anything.

Mr. Leibowitz: Let us prove it then.

The witness further testified:

I don't know G. W. Minton, George B. Phillips or William Rash. I don't know J. P. Brown by his initials.

I don't know Arthur Gamble, C. ... Mason or Nash Manning. J. M. Tidewell is a white man. I don't know A. E. Chambliss by his initials. I don't know John G. Hicks or Robert E. Hall. I know a Robert Hall, but I don't know whether it is Robert E. I don't know Raymond Hodges or C. D. Pole. J. M. Ragsdale is a white man. Walter Berry is white.

I was born and raised in Jackson County and am thirty-eight years old. I have never known of a single instance where a negro was called to serve as a juror in any case, civil or criminal, in Jackson County. I don't know anything about whether a negro was on any jury roll at any time in Jackson County, my duties started March, 1932. I prepared a jury roll. I was president of the board.

Defendants' counsel then asked the witness the following question:

Q. Is there a single negro on the jury roll that you prepared, yes or no?

The state objected. The Court sustained the objection and defendants' counsel excepted.

The witness testified further: I do not know who are the members of the board that served in the year 1930, that drew up the list from which the jurors and grand jurors were selected in 1931, who were the members of the board. I have been told who they were. The members of the jury board were Hunt Stewart of Scottsboro. Will Jenkins, and he is from Scottsboro. I don't recall the other names but Mr. Morgan was the Clerk.

Cross Examination:

I do not know A. B. Moore. I do not know A. B. Joseph. I don't know Moore by the name of A. B., but by the name Bud. I know the qualifications a juror is supposed to possess. I am a jury commissioner.

The following then occurred:

Q. Would you consider him qualified to serve as a juror?

Mr. Leibowitz: Let him state the qualifications.

Attorney General Knight: I will read them to him.

Mr. Leibowitz: I want to know how much he knows about the qualifications.

Attorney General Knight: He is your witness.

Mr. Leibowitz: I want to see if your Honor please, and I think in the interest of justice we should see how much this jury commissioner knows as to the qualifications of jurors.

Attorney General Knight: He is presumed to know the duties he is to perform.

Q. The question was did Bud Moore possess the qualifications of a juror in your opinion? A. No, sir.

Court: Overrule the objection.

Mr. Leibowitz: We except.

Mr. Leibowitz: Tell us what the qualifications are for a juror of Jackson County, recite them.

Attorney General Knight: I am examining the witness.

Mr. Leibowitz: I beg your pardon, I thought you were through.

The witness testified further:

The general reputation of Bud Moore is not esteemed in the community in which he resides as a man of sound judgment nor is he esteemed for his high character. I know L. C. Stapler at Limrock. He is a negro. He is not esteemed in the community in which he resides as a man of sound judgment nor is he esteemed for his high character. I do not know whether he is in the jury box. I do not know Timberlake.

Re-direct Examination:

I have not gone into the community where Stapler lives, I wouldn't call it a negro community, two or three negro families live there. I have known Cass Stapler for fifteen or eighteen years personally. I don't know as I have gone in the community to inquire what his reputation is, but I have heard outside the community.

The following then occurred:

Q. Can you recite to us what the law says about the qualifications of jurors?

Attorney General Knight: We object.
Court: Overrule the objection.

A. Well a man has got to have a good character.
Q. What is the matter with Timberlake's character?

Attorney General Knight: I object.
(No ruling.)

Q. Good character, go ahead? A. And got to be a man of good judgment, intelligent, honest, and not to be afflicted with any disease.
Q. What kind disease suppose he has, consumption? A. Contagious disease.
Q. Consumption is a contagious disease, would that disqualify him? A. I don't know.
Q. What does the law say with reference to disease?

Attorney General Knight: We object.
Court: Sustain the objection.

Q. Tell us the qualifications you would apply with reference to disease in excluding a man, when he has a disease, what kind of disease?

Attorney General Knight: I object.
Court: Sustain the objection.

Mr. Leibowitz: I except.

Q. Does a disease that is contagious and doesn't affect his mentality exclude a juror under the law? A. (No answer.)

Q. You don't know do you?

Court: Sustain the objection to that question.

Mr. Leibowitz: May I be heard on that? If I can show this jury commissioner doesn't know the qualifications in the selection of jurors, and he is the President of the Jury Board, isn't that going to affect your Honor as to whether there were any of these negroes that came within those rules or didn't. If I can show that he doesn't know.

Attorney General Knight: He has stated he didn't have a good reputation.

Mr. Leibowitz: I am speaking of disease.

Court: Sustain the objection to that.

Q. Suppose I told you, Mr. Moody, that no man is disqualified because he is diseased if his disease isn't permanent and tends to affect his mentality, is that something new to you?

Attorney General Knight: I object.

Court: Sustain the objection.

Mr. Leibowitz: I except.

Q. What other qualifications are there? A. He has to be over twenty-one and not over sixty-five, and be a house holder or a free holder.

Q. He has to be a house holder or a free holder? A. I think so.

Q. Suppose I told you the law is as to this—

Attorney General Knight: We object.

Court: Wait a minute.

Q. Suppose I told you the law doesn't require a man shall be a house holder or free holder, suppose I tell you only in cases where a man can not read English must he be a house holder or a free holder, would that change your statement?

Attorney General Knight. We object.
Court: Overrule the objection.

A. If I understand it, if a man can not read English it doesn't bar him from serving on a jury.

Q. Suppose he isn't a house holder or a free holder, would you still put him on your jury list, if he couldn't read English?

Attorney General Knight. We object.
Court: Sustain the objection.

Q. If he could not read English and was not a house holder or a free holder, would he be qualified to serve? A. If he couldn't read English and wasn't a house holder or free holder?

Q. Yes, sir. A. No, sir.

Q. Could he serve on a jury if he couldn't read English, if he was a free holder could he serve? A. If the other qualifications made him competent he could.

Attorney General Knight: That is right.
Mr. Leibowitz: We have some bleachers with some rooters in them.

Q. Do you know of any negroes at the present time on your jury roll—you made up the jury roll didn't you? A. Which roll?

Q. The jury roll from which— A. Since 1932.

Q. You made them up since 1932, and you don't know of any negroes on any jury roll you have made up?

Attorney General Knight: We object because that is illegal and immaterial.

Court: I think it would be prior to or up to that time, sustain the objection.

Mr. Leibowitz: I offer to prove not only prior to the trial, but since the trial, that the custom has been maintained, and I offer to prove it as a custom.

Court: I will let you prove it up to the time but not since the time.

Mr. Leibowitz: We except.

The witness further testified: I don't know Timberlake. I do know Mark Taylor. He is not a man of good character. I couldn't tell you if he has ever been convicted of any crime. I don't know if he has ever been charged with any crime. I know him—I have known him I guess about ten years. I have had business relations with him. Had my suit pressed.

Defendants' counsel then asked the witness the following questions:

Q. What is there about this negro that you say he isn't good enough to serve on the jury?

Attorney General Knight: We object.

Court: Overrule the objection.

A. Well, I always understood he was living in adultery with his wife before he married her.

Q. You don't know that of your own knowledge? A. General talk of the town.

Q. How long has he been married? A. I couldn't tell you.

Q. How long have you known him to live with his wife?

Court: I think you are extending it too far on his reputation.

Q. What else do you have against his character? A. I think that is enough.

The witness further testified: Besides that I have nothing to complain about, he has never stolen from me. I do not know of anybody else he has ever stolen from. That is why I would disqualify him for serving as a juror. Just on that basis. Simply because somebody said he had lived with his wife in adultery before he was married to her, that is the basis. That is the general talk of the town. That is his character. I would disqualify him on his character. I don't know if he is intelligent. I have never found him any other way but honest. He is over twenty-one and under sixty-five. I don't know of any disease he has such as affects his mentality, or any permanent disease.

I know L. C. Stapler. I have known him about fifteen years. He has been a farmer ever since I have known him. I don't know how old a man he is. I couldn't tell you if he is over twenty-one or under sixty-five. I have never had any business relations with him. I know where he lives. He lives at Limrock, Alabama. I know other people that know him. I have discussed him with other people. I couldn't say how long ago.

I know people that know Mr. Stapler in the community where he lives. Well, I don't know now what there is about his character I object to, but he has been living in adultery. I only know it from other people. Outside of that I couldn't tell you, I have been knowing him a long time.

Q. That is all you know about him, is that really your objection to him?

I know C. S. Finley. I couldn't tell you what his business is. He lives at Scottsboro. I know him a long time. I know Travis Mozley. I think he is a porter on the Southern Railroad. I don't know about him being a Pullman porter. I don't know where he lives. I don't know much about him. I know Pleas Larkin. He hasn't got any business. I know Elisha Matthews at Scottsboro. I think he is working in a hardware store. Sweeps the floor and builds fires.

J. H. STEWART, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

I was on that jury commission in 1930. I do not know these men that were drawn, that served on the Grand Jury; Charles Morgan, H. Rogers, J. H. Cox, G. W. Minton, William Rash, Arthur Gamble, C. A. Mason, Rash Manning, John P. Hicks, Robert Hall, Raymond Hodges, C. D. Pole and Walter Berry. I don't know but one or two personally. I helped to select those names to make up the jury roll. We called in men from different parts, different precincts, and read the roll to them and he checks the names of the qualified jurors, he checks those names off of our roll. We take those people's word for it, the men who come in, the law gives us that right. The jury commission did check over these qualifications. I and the Jury Commissioners, we took those men that fit the statute. After the name of each citizen of Jackson County there is the word "col." written, to designate his color, for instance, John Jones, if he is a colored man there will be "col." I have seen names where it wasn't. You take the Tax Assessor's books, we were supposed—we could get the name from the Tax Assessor's books, or the City Directory, or Telephone Directory, anywhere we could get them. But, you take the Tax Assessor's books, maybe John Smith, it don't say whether he is colored or white. When he pays his taxes they take his money whether he is colored or white. But when they take him for jury duty the names are designated "col." when they are colored, if they are down there "col."

The following then occurred:

Q. Do you know of any negro, was there any negro on any list your commission prepared from which this Grand Jury was drawn, the name of any negro on that jury, yes or no? A. State the question.

Q. (Question read by the stenographer.) A. Yes, sir.

Q. Was there any negro on the jury roll from which the Grand Jury was drawn? A. Negroes on the list.

Q. What list? A. On the list these different parties we would call on.

Q. I ask you if there was any negro on the jury list from which this Grand Jury was drawn? A. I don't remember.

Q. Do you know of any? A. The names of negroes, the negroes names are on the voting list.

Q. I am not asking you about the voting list. A. On the jury roll?

Q. Speaking of the jury roll? A. The Clerk copied the jury roll from the voting list.

Mr. Leibowitz: I move to strike that out.
(No ruling.)

Q. Of your own knowledge do you know of any, as a member of the Jury Board, from which this jury was drawn, in the indictment of these negroes in these cases, do you know the name of any negro on that jury roll, were those names put in the box, do you know of anyone that was a negro, answer that yes or no? A. I know of some negroes names on there.

Q. Is that of your own knowledge? A. Yes, sir.

Q. When you make up this jury roll, is the list you make up the names of the people that serve on juries? A. We try to make a list of the male population.

The witness testified further: We make up a list of qualified and unqualified. We first make us out a list of all the names, all male citizens, and try to get them all, then, we call in different parties from different precincts of the county, men we absolutely know to be all right and show that to them, and they then check this list in their precinct where they are supposed to know all of these parties. There may be two or three in the same precinct. Then after we get all of these precincts covered, we take the names of those that are qualified

and the Clerk writes them on a card, the name and address and Post Office and occupation, and places them in the box. That box is sealed and opened only in the presence of the Court. I think the last time I served the best I remember there was six or seven hundred names, these were new jurymen. We just fill it once a year. I expect there was fifteen hundred or two thousand names in the box. I do not know the name of any negro in that box. I couldn't swear whether there was or wasn't because I didn't personally know all of these names. The list ought to be—it shows on the jury roll kept in the Probate Judge's office. It is a well bound book, every name in that book is certified to by me, as a member of the Jury Commission, and that is now in the Probate Judge's office supposed to be locked in the vault. Judge Mooney did not send that book with me.

Mr. Leibowitz stated: We asked for that book but Judge Mooney said he would send the book by somebody.

The witness testified further:

I don't know anything about it since 1930, August 18th is the last time I served, that is when we wound up the last time. Mr. Morgan came here with me from Scottsboro, he wasn't a commissioner, he was the Clerk. I do not know whether Mr. Morgan has got that book. Jim Winn and W. P. Jenkins who served with me on that Board are here. In all the years I have been a resident of Jackson County, I have never known of a single instance, where any negro sat on any Grand Jury or Petit Jury, in the entire history of that county, I don't recall any, I am forty-eight years old and I never sat on it myself. I have never been excluded from the jury roll, not that I know of, I don't know whether I would answer the qualifications.

Cross Examination:

In my selection for jurors for the jury roll and the jury box of my county, I did not inquire as to color,

that wasn't discussed, or the race, or the creed, it was political standing, or, religious standing, that would be the question there? The jury roll does not disclose the color of the person in the jury box. When I helped select the jury for my County, during my term as Jury Commissioner, including the time in which this indictment was found, I did not exclude any negroes from that jury roll on account of his race or color; not that I know of.

Re-direct Examination:

Q. Did you ever exclude any negro from service on the jury roll on account of his race or color or any other reason? A. No, sir. Not that I know of.

Q. Did you ever exclude from the jury rolls any negroes because you found first, he was a man under twenty-one years old or over sixty-five, and he was excluded by reason of his age; secondly because he was a person who wasn't esteemed in the community for being a decent and honorable citizen, for good sound common sense and judgment, did you ever see or hear of them not going to take that negro because he wasn't esteemed in the community for good sense and judgment? A. No, sir.

Q. Did you ever have ocassion to say, I can't take that negro because he is a fellow that has a disease which may affect or does affect, his mentality, did you ever say that to yourself, with reference to any particular negro? A. No, sir, negroes was never discussed.

Did you ever say to yourself as a jury commissioner in compiling those lists, I am not going to take that negro because he has been convicted before of a crime involving moral turpitude, have you ever excluded a negro on that ground, did you ever find any negro that came within that category, under your personal knowledge in Jackson County? A. I couldn't recall any, no, sir, I don't know.

Q. Have you ever known of any negro in Jackson County who was excluded by reason of the fact that he could not read English, and that negro at the same time wasn't a free holder or house holder, did you ever say I can't take that negro because he is prohibited under

the rules from serving by reason of that provision? A. No, sir.

Q. Or anybody in your presence? A. It never was discussed.

Q. You had been a jury commissioner how long? A. I was on it under Bibb Graves administration, 1928, 1929, 1930.

Q. Three years? A. Yes, sir.

Q. And you never had occasion to exclude any negro in Jackson County by reason of the disqualifying provisions I have just called to your attention? A. Not to my personal knowledge, no, sir.

Re-cross Examination:

Q. As a matter of fact doesn't the law provide the jury roll shall be kept secret after it is made up? A. Yes, sir.

Re-direct Examination:

Q. Isn't it quite true, the fact, in the thirty or thirty-four years you have been in Jackson County, the fact that no negro has ever been called as a Grand Juror or Petit Juror, do you ascribe that to mere coincidence, or it just happened that way?

Attorney General Knight: We object.
Court: Sustain the objection.

Q. Do you consider that coincidence?

Attorney General Knight: I object.
Court: Sustain the objection.
Court: As I understand it, you had a roll of all the jurors, the male citizens?

A. We tried to do that, Judge.

Court: And you passed on their qualifications and in passing upon them you didn't know whether you were passing upon negroes or whites?

A. No, sir, didn't know them all.

Court: You inquired about their qualifications?

A. That is all that was discussed.

Q. If I understand it, in all those years you have been a resident, and in the several years you have been a Jury Commissioner, the fact that no negro has ever served on a Petit Jury is a mere coincidence?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

Re-cross Examination:

Q. As a matter of fact it is a matter of selection instead of exclusion? A. Yes, sir.

Re-direct Examination:

Q. You don't know of any negro ever being selected do you, yes or no? A. I can't recall any.

Q. By that you mean you don't know of any ever being selected in the history of Jackson County, as far as you know? A. As far as I know I don't know whether there was or not.

Q. You don't know of any that has been selected? A. No, sir.

Re-cross Examination:

Q. As a matter of fact weren't a lot of white people in Jackson County not selected for juries? A. Yes, sir.

Mr. Leibowitz: We concede that.

Attorney General Knight: I want the record to show there are probably more white people not selected for jury service than there are negroes in the County.

A. Yes, sir.

Re-direct Examination:

Q. You wouldn't agree merely because the Attorney General asked you the question?

Attorney General Knight: We object.
Court: Don't answer that.

Re-cross Examination:

Q. You stated I believe that you thought there were more white people who were not selected for jury duty in Jackson County than there are negroes in the County? A. Yes, sir.

Re-direct Examination:

Q. Do you know of any reason why they were excluded? A. No, sir.

I didn't personally exclude them. As a matter of fact I don't know much about all the individuals on the juries. I do know some of them. I do know the names of some that have been excluded in Jackson County from service on the juries. I personally did not examine any negro for jury service. Could not say whether other Commissioner ever examined any particular negro for jury service. I never took the trouble to go into the negro section of Jackson County among the negroes to find out if there were some intelligent, decent, honest men, when I complied the roll. I don't know of any other man that took that trouble. I couldn't tell you about that. I don't know of any man who ever was delegated to go out in the negro communities among any negro persons, to inquire whether there was any material there fit for jury duty, that was never discussed, the race or creed wasn't.

K. M. MORGAN, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

I was the Clerk of the Jury Commission, Jury Board, for the year 1930, and had charge of the list from which the jurors were drawn that served on the Grand Jury that indicted these boys in this case; that means the jury box; and from that jury roll all Grand Jurors and Trial Jurors that served in this case. If there wasn't very many in the box we would put in some four to six hundred. I was clerk for three years, 1928, 1929 and 1930, three sessions. The other jury board didn't come in until 1931 or 1932. We make up a jury roll but it wasn't filed with the Probate Judge. The books are kept in his office. I haven't got that here; Judge Mooney did not send it with me. I am not one of the Commission now. I haven't them here.

The following then occurred:

Q. Do you know of any negro on the jury roll for the year 1930 or 1931, especially the rolls from which the Grand Jury that indicted these defendants was drawn? A. I don't know as I do, there were a lots of names.

Q. Just answer the question, do you or do you not? A. I wouldn't swear I did or I didn't, I don't know everybody in the jury box.

Q. Do you know any jurors on that list at all that were colored. A. I couldn't swear.

Q. Do you know any colored people on that jury? A. I couldn't recall who all was on the jury roll.

Q. Can you recall just glancing before you, can you recall the name of any colored person on that jury roll, can you recall, yes or no. A. I don't know exactly whether I can recall them or not.

Q. Can you recall as you sit there the names of any particular person that is colored, negro citizens of Jackson County, on the jury roll, cite one case? A. I wouldn't

want to say because there are so many on that jury roll.

Q. Do you know anyone, as you sit there can you recall any one person who is colored on that jury roll? A. I wouldn't want to say, because that has been about three years ago.

Q. Can you name any single negro on that jury roll from which this Grand Jury was drawn? A. I don't know, I wouldn't know all of their names, they were from all over the County and I don't know them all personally.

Q. I am not asking you about that, I am not trying to quibble with you. I ask you as you sit there, can you recall the names, as you sit there can you give us the name of one negro on that jury roll from which this Grand Jury was drawn? That is a simple question, I have asked it six times and I haven't gotten an answer? A. I couldn't name any white man and swear to it.

Q. I don't think you want to answer the question. A. I am not going to answer the question—

Court: Can you recall the names of any person?

A. It has been three years since I put them in the jury box.

Q. You can't recall one name? A. I didn't answer that that way.

Q. As you sit there in the chair, can you think back and recall, can you personally recall, one single name of any man you knew to be a negro on that list from which this Grand Jury was drawn? A. I wouldn't want to name one because I wouldn't know positively.

Court: You can't name any man?

A. No, sir, I wouldn't want to swear positive his name was there.

The witness testified further:

I have lived in Jackson County about twenty years I guess. I do not know of any negro that ever served on a Grand or Petit Jury in Jackson County, not while I was in the Court House, I am not there at every court. Of my own knowledge I do not know of any case where a negro sat on the Grand Jury or Petit Jury.

Cross Examination:

While I was Clerk of the Jury Commission it was my duty to obtain a list of names and submit it to the Jury Commissioners, from which the Board can tell whether or not they will be selected, I never inquired as to the race or color of any person. I do not know of any person having been excluded on account of their race or color, from the jury rolls. I never inquired and do not actually know whether there are any negroes in that box.

Re-direct Examination:

I can not name any human being on the face of God's green earth that can tell whether there were any negroes in that jury box.

Re-cross Examination:

I did not ever knowingly nor did I know of a Jury commissioner ever having excluded any person from the jury roll on account of their race, color, or creed, not in my presence. That was never discussed.

Re-direct Examination:

The following occurred:

Q. Just taking for granted it wasn't, if a man was a negro he was "out"? A. We didn't take things for granted.

Attorney General Knight: I object.
Court: Sustain the objection.

Q. That is just the unwritten law isn't it?

Attorney General Knight: I object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

JOHN SANDFORD, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

I am fifty years old and live at Scottsboro, Alabama. I have lived at Scottsboro all my life. I am a family man, married, wife and children and am a plasterer by trade. I was not, in the years 1930 and 1931, and for several years prior thereto, afflicted with any permanent disease or physicial weakness that would render me unfit to discharge the duties as a juror. I can read and am a citizen and born in this County. I have never been convicted of any crime and have never been convicted of any offense involving moral turpitude. In my daily walks of life, I deal with other people in the community both white and colored and have some times discussed the affairs of the State and National affairs there in the community in which I live, and matters of public interest with other citizens and read the paper. I read the Chattanooga Times and our paper and understand them as far as I can. I have never been put on a jury roll and have never been examined by any Jury Commissioner as to my qualifications and have never been called as a Grand Juror or Petit Juror.

The following then occurred:

Q. Do you know of any negro in Jackson County who was ever called as a Petit Juror or Grand Juror? A. I have known them to in the higher courts but I haven't known them in the lower courts.

Q. You mean the Federal Courts? A. Yes, sir.

Q. I am not speaking of the Federal Courts, I am speaking of the State Courts? A. No, sir.

Q. Do you know of any negro ever being called? A. No, sir.

The witness testified further:

I am acquainted with negroes in Scottsboro and other negroes in Jackson County. I couldn't say how many negroes I know over the age of twenty-one and under the age of sixty-five. I attend the Methodist Episcopal Church. The pastor of that church is Callahan. I know other members of the congregation and can mention the names of several members of my congregation, male citizens of Alabama and Jackson County, who are citizens reputed to be honest and intelligent men, and who are esteemed in the community where they reside for their integrity, good judgment and sound character, over twenty-one years of age and under sixty-five years and, who are not afflicted with a permanent disease or physical weakness that would render them unfit to discharge the duties as jurors and, men who can read English, and those who can't read English are house holders or free holders. They are Mark Taylor, my brother, Hugh Sandford, and John Staples comes in our congregation, and Floyd Snodgrass. I couldn't go on and state and keep them in my mind who all just comes in there. I know P. Toliver and know him to be a man of good sound judgment, I don't know about him being under sixty-five, but he is a good man. He is esteemed and honest, generally known to be honest and intelligent and I think he is esteemed in his community for integrity, good character and sound judgment. He is not an habitual drunkard. I don't think he is afflicted with any permanent disease or physical weakness that would render him unfit to discharge duties as a juror. I have known him all my life. I know him when I see him, he don't live right at my home. I think he can read and write. I don't think he has ever been convicted of any offense involving moral turpitude. I know Will Watkins, he lives at

Fackler, Alabama. I have known Will Watkins all my life. I think he would fit these qualifications you have outlined to me as to his character and all these other qualifications. I think he fits them the same as, particularly in reference to the case of Toliver. In my opinion he is a man qualified to sit as a Grand Juror or Trial Juror under the rules you outlined to me. I know M. T. Talley of Stevenson and have known him fifteen years. I think he would fit those qualifications, those which would render him eligible to serve as a member of a Grand Jury or Petit Jury, in the same way. I know Mr. Rudder of Stevenson, Alabama. I think he is a good man and he would qualify to serve as a juror if he was put on. I know Ed. Redd, but I don't know much about him. I don't know much about John Branch. I know Timberlake of Fackler, Alabama. His character and everything—he is a good man, but I don't think he can read. He is a family man and is head of a household. Except for being able to read I would say he possessed all the other necessary qualifications. I know A. Joseph of Stevenson. I would say he possessed all these qualifications as to age and the other requirements, all the questions I answered about Toliver in detail, I would say the same about this man. I know K. D. Snodgrass. I think he is a good man, he is a man over twenty-one and under sixty five. I think he is generally reputed to be honest and intelligent, and esteemed in the community for his integrity, good character and sound judgment and not a habitual drunkard and he isn't afflicted, to my knowledge, with any permanent disease or physical weakness which would render him unfit to discharge the duties as a juror. I think he would be qualified under those qualifications. I don't know much about Hugh Collier. I know Louis Cole. He is all right. He would pass all of those qualifications. I know Dave Stevenson, and I think he would pass all of those qualifications. I know Bud Moore, a merchant. I think he would pass all of these qualifications. When I say I think he would pass it is my opinion or knowledge from what I have learned in the community about his reputation. I

know C. S. Finley. I have known him all my life. I think he would pass all of these qualifications without going into detail. I know Travis Mozley all of his life. I think he would pass all of these qualifications. I know Pleas Larkin, have known him all my life. I think he would pass all of these qualifications. I know Elijah Matthews. I have known him all of his life. I think he would pass all of these qualifications. I know Henry Ross. I have known him all of my life. He wouldn't pass the qualifications now because he has been proven to be of unsound mind. All of these names which I said were qualified to sit on Petit and Grand Juries were negroes.

Cross Examination:

My name is John Sanford. I have lived in Jackson County nearly all my life. I am a plasterer. I have been engaged in that occupation about twenty years. I never took part in ne deliberation of the Jury Commission of that County. I have never been on a Federal Jury Board. I know all of these people the defense asked me about yesterday and have known them for a lifetime.

The following then occurred:

Q. And know they possess all of the qualifications prescribed for a juror do you? A. What he asked me I do.
Q. What he asked you? A. Yes, sir.
Q. What did he ask you?

Mr. Leibowitz: I object to that question.
Court: Overrule the objection.
Mr. Leibowitz: I except.

A. I can't tell you right now.
Q. What did he ask you? A. I couldn't remember all of the things he asked me.
Q. You have testified that Hugh Sanford, Mark Taylor, John Staples, Floyd Snodgrass, Henry Ross, Travis

Mosely and others, possessed the qualifications prescribed for a juror, haven't you? A. That is what he asked me.

Q. Don't you know that to possess the qualifications of a juror that you must be held in esteem in the community in which you live as a man of sound judgment? A. I think that is what he asked me.

Q. What does the word esteem mean?

Mr. Leibowitz: I object because he wouldn't let me ask him—the State objected to the very question I put to the learned Jury Commissioner.

Attorney General Knight: I am examining the witness on cross examination.

Court: Make your objections to the Court, overrule the objection.

Mr. Leibowitz: I except.

Q. Tell me what the word esteemed means? A. I don't know whether I could tell you that or not.

Q. How do you know they possessed the qualifications inquired about then?

Mr. Leibowitz: You are not going to bully this witness, or any other wtiness.

Court: Make your objections to the Court.

Mr. Leibowitz: Ask the Attorney General to stand back a little bit, and just lower his voice, and stop sticking his fingers in the people's eyes.

Court: Ask him the qustion.

Q. Will you please tell me what the word "esteem" means? A. I might tell you if I had a dictionary, or something the other, I couldn't "rememorize" it.

Q. You swore these people possessed the qualifications of a juror he stated, didn't you? A. According to my knowledge they did.

Q. And you think they are esteemed, do you? A. The way he asked me according to my knowledge.

Q. And you don't know what the word "esteemed" means John?

Mr. Leibowitz: Call him Mr. Sanford, please.

Attorney General Knight: I am not in the habit of doing that Mr. Leibowitz:

Court: That has nothing to do with the case.

Q. You swore all of these men possessed the qualifications of a juror yesterday? A. Yes, sir.

Q. And you tell me you don't know what the qualifications of a juror are, isn't that true?

Mr. Leibowitz: We object to that.

Court: Overrule the objection.

Mr. Leibowitz: We except.

Q. You tell me you don't know what the qualifications of a juror are now?

Mr. Leibowitz: We object if the Court please.

Court: Overrule the objection.

Mr. Leibowitz: We except.

A. I know what he asked me what he said—I tried to answer what he asked me.

Q. You just answered anything he asked you? A. He asked me was he a freeholder or a householder.

Q. Did he ask you anything about esteemed? A. And had he ever been convicted.

Q. Did he ask you anything about esteemed? A. I don't know that he asked me all of that, he might have asked me, I don't remember.

Q. Didn't he ask you if these people you named would make good jurors and possessed the qualifications? A. And their character and being a citizen of the county and state.

Q. Are they esteemed, answer that question, yes or no. A. As far as my knowledge, I think they are.

Q. What does esteem mean John? A. I wouldn't know that, I might know if I had something to look it up in.

Q. You would know if you had something to look it up in, but you can swear before you looked up, isn't that what you did yesterday, John?

Court: That is argument with the witness.

The witness further testified: The qualifications of jurors I might not know the form of in the book laid down, but I know them in a way. I know in a general way but not in the form of the book laid down. I couldn't memorize from the book or the law. Moral turpitude means, that is a man that has not been convicted of any malicious crime that would stain his character and reputation in the community in which he lives. I say that all of these people whose names were called to me yesterday have not been convicted of any crimes involving moral turpitude. They are not guilty of any crimes involving moral turpitude, not that I know of as far as my knowledge.

I stated yesterday they possessed the qualifications of a juror and I say today what I said yesterday. I don't know whether they possess what is prescribed by law. I don't know whether any of these names he called to me yesterday are in the jury box or on the jury roll.

Re-direct Examination:

I would say all of these men whose names I have mentioned, were well thought of, well spoken of in the community in which they live. I never sat on a jury commission. I have never been invited to sit on a jury. I have never seen any Jury Commissioner of Jackson County, nor has any agent of a jury commission ever come to my district or precinct where I live, and asked me or anybody else any questions, any of my neighbors any questions, not that I know of, not for the purpose of giving a worthy, decent negro the test and a chance to sit on a jury. I have never heard of any such case.

Re-cross Examination:

I did not testify yesterday that Timberlake was qualified for jury service. I said he was qualified—he asked

me I remember so far as my knowledge on that, and I said he couldn't read and write and under that head he wouldn't be qualified because he couldn't read and write, but any other thing he was all right as a good man. I don't know that is the reason the school board of that county asked that he be removed. I never sat on the school board with him. I have been on the school board. I am not now. I think Timberlake is looked up to highly. As a negro in our county he is. I am talking about he is looked up to in our county as a negro among the white folks as being a high standing darky. He is looked up to as a man of sound judgment all right, but I said that would be one thing that would knock him out because he couldn't read and write. I don't know that that knocks him out. Timberlake lives on a white gentleman's farm. There are white people there in that community. There is white people and colored people living all mixed up, white tenants and colored tenants. I testified as to Timberlake's reputation. I heard those people in the community in which he lives all say he is a good man. I can't recall the man he works for but I heard him say the merchants at Fackler says he is a good man. I have not heard them say he was esteemed as a man of sound judgment. In there speaking about him they wouldn't hardly put all of that emphasis to it. I heard them all say he had good sound judgment. I think it is prized in his community he has lived a long time on the farm he is living on. I don't know nothing about the price or value set on his judgment. I couldn't tell you if he is on the jury roll. I don't know whether any man I testified about was on the jury roll.

Re-direct Examination:

The duties of the colored school board in most school districts, is they are to look after the upkeep of the school and property, indebtedness of the school, and keeping the school going on under a good system, and seeing to getting good qualified teachers, that is their duty in our district, and I suppose that is it in all dis-

tricts. The Superintendent of Education appointed me on the school board. He is a white man.

Re-cross Examination:

We have only supervision over colored schools; we don't handle white schools.

C. S. FINLEY, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

My name is C. S. Finley. I live at Scottsboro, Alabama. I am fifty-five years old. I was bred and born there. I have never seen a colored man sitting on the jury in the Circuit Court of Jackson County. I never served on a jury. We have school boards in my county. The members of the school board are Mark Taylor, Hugh Sandford and Lawrence Hunter, now. They are negroes. I think they were made members some time during last year. We have colored schools in my county and colored school teachers. I don't think there are any men school teachers there. Some in the county, but not in my district. We have churches, preachers, deacons and trustees, they are men. I don't know exactly how many colored churches, good many, though. We have an association of colored churches that meets at Scottsboro. That embraces churches all over the county in that district. We have preachers that preach there. Callahan, he is there and Reverend Graves, and Reverend Crutcher. Those men are men of some education. There is one hospital there but it is white. I attend the schools sometimes. I used to be a trustee of a school at Scottsboro. I was trustee there for about six years. At that time the people elected the trustees, but since that we select so many and send them in and the white board selects them out of that number. There was an election when

I was elected trustee. Regular ballot voting in the election. I was elected by ballots. I don't remember what year, I think it was long about 1927 or 1928. I served about six years, until they changed the law. Then the white trustees appointed my successor. Huey Sandford was the first they appointed, and my son, and John Sandford, and Mark Taylor. They abolished that board after they served the term out. My son is living. He is now at Scottsboro. He is thirty-two years old, in good health. He went to school when he was a boy. He got about the seventh grade. I went to school and as far as the eighth grade. I know Mark Taylor, Will Watkins, L. C. Cole, Pleas Larkins and W. T. Mesely. I know some colored men in Jackson County, that are over twenty-one years old and under sixty-five, Huey Sandford, Snodgrass, and there is a Cain Snodgrass I know. The duties of the school board while I was on it were to see after the school, watch after it, keep up the interest of the school and everything. I had to look after the employment of the teachers, look after the property, and look after the discipline and welfare of the children. I don't know how many schools we have in Jackson County, a good many schools. I own property in Jackson County. All these other negroes I have spoken about own property and pay taxes. I have never been called or questioned about sitting on a jury. I do not know whether any of these negroes, whose names I have called, have ever been called by the jury board, and questioned whether or not they were qualified to sit on a jury. I never heard of anything like that going on in Scottsboro, or Jackson County, of the Jury Commissioners investigating the colored men to see if they were qualified. The school board examines into the qualifications of school teachers, and make inquiries, before they hire them. My board did that.

I was acquainted with the reputation of Mark Taylor and his standing in the neighborhood where he lived. It is good. Ever since he has been around there he has made a good citizen. I would say he is a man of sound

judgment. He is not afflicted with any disease. He is not a habitual drunkard. He has never been convicted for stealing or any crime involving moral turpitude that I know of. He is a man that bears the name of having a good character. He is a householder, the head of a family, married man. He owns land. He is a freeholder.

I know L. C. Cole. He lives at Stevenson. His character is good as far as I know of him, I never heard anything against him. He is a man of good health. He has no disease or anything that would impair his body or mentality that I know of. He has never been convicted of any crime to my knowledge, of any stealing or anything of that kind that I know of. Everybody gives him a good name. He is a freeholder, a householder, the head of a family and owns land. I never heard of him drinking.

I know Please Larkin, W. T. Moseley and Cam Rudder at Stevenson. Cam Rudder is a man of good character, I would give him a good name on all these questions. I know A. Joseph at Stevenson. His character is good. I know Louis Cole. He is all right, a good man, good negro and as to all these questions you asked me about. I know K. D. Snodgrass of Hollywood. His character is good. He is good, on all these questions I asked you about, for jury service. I know Bud Moore. His character and his standing is good. I know Travis Moseley, a railroad man that lives in Scottsboro. His character is good. I know Elijah Matthews of Scottsboro. His character is good. I know Henry Ross. His character is good but he has been kinda insane for the last seventeen or eighteen months. It has gotten bad since these boys were indicted in this case, prior to that time he was all right. I know the Reverend Crutcher who used to live down there, pastor of the Baptist Church.

Cross Examination:

My name is C. S. Finley. I have been a citizen of Jackson County all my life, raised and born there. I

know John Sandford that just testified here, and I know Snodgrass. They are honest men as far as I know and intelligent men. I know the community in which they live. There are white people in that community. More white people than colored people. I am just going by the way they act about them, they seem to think pretty well of them. They treat them as citizens and everything, nice to everybody that tries. The way they live, they never do nothing, nothing like that. I think a person who never does anything, I think he is a good citizen. I mean by doing nothing not in trouble, into a whole lot of something or other. My son was into something about a week or two ago and got convicted in one case. In the other case they turned him loose. I esteem Snodgrass and Sandford. I esteem them for their good sound judgment. I mean by the word "esteem" men who do right and justice; that is esteem. I try to do right in justice to them. Everybody looks on them as their character, they looks on them as good fellows. My son has had a good record, that is the only thing he has ever been into, up to that he was esteemed as a good citizen.

I have talked about my school board, those are local school boards just in the community. In my county white people and colored people don't go to school together. We have separate school boards and separate schools. Sandford and Toppery Snodgrass were elected by the colored patrons of the school. That means people who have children in that particular school. That doesn't mean everybody in the county elected them on that board, nor everybody in the community, but just the majority of that particular school. It is just a colored school. I think these people possess the qualifications of jurors. That is, what I should think about it, they are men of good morals, and good standing, and I think they would be qualified. A list of names was read to me and I testified I thought some of them probably had good morals and so on, but not all of them because I didn't know all of them, most of them. I have never sat with the

jury board. I do not know how the jury board selects the people whose names they put on the jury rolls of Jackson County. I don't know whether I would know all about it. I have seen them selecting them. I have been in there and seen them. It look like they tried to get the best. I saw a jury commissioner select them when they were getting them on cases.

The following then occurred:

Q. Don't you know that isn't the selection of the jury roll? A. Yes, sir, I said I didn't mean—

Mr. Leibowitz: We object.

Attorney General Knight: I expect to show the absolute ignorance of this negro.

Mr. Leibowitz: May I state my objection. I object to this question on the ground it is highly incompetent, irrelevant and immaterial, and for the reason this man's knowledge as to the large procedure, which is probably not known by one-half of the lawyers in any county in this state, and it is not a test of this man's qualifications to sit on a jury. He isn't supposed to know all the technical rules, how the names are put on the jury and how the roll is made up, especially in view of the fact that none of these folks at any time have ever been given an opportunity to serve on a jury and learn these things.

Court: Overrule the objection.

Mr. Leibowitz: I except.

Q. Have you ever seen the Jury Commissioners selecting a jury? A. No, sir.

Q. You have not? A. No, sir.

Q. Do you know how they go about selecting a jury?

Mr. Leibowitz: I object.

Court: Overrule the objection.

Mr. Leibowitz: I except.

A. No, sir, I don't know how they go about it.

Q. You don't know whether they inquire or send people out to examine people personally or not?

Mr. Leibowitz: We object on the ground he says he knows nothing about it.

A. No, sir, but I don't think they do.

(No ruling.)

Q. White people or colored people? A. No, sir, I never heard of it.

Q. You know of a good many white people in Jackson County, I suppose? A. Yes, sir.

Q. Do you know whether they were on the jury roll or not?

Mr. Leibowitz: We object because that has no bearing on this case.

Court: Overrule the objection.

Mr. Leibowitz: I except.

A. Not all of them.

The witness further testified: I know because lots of them are not competent to be on the jury, and lots of colored people are not competent. I don't know whether I know all of them that is on it. I don't know how many to my knowledge that are on it. I do not know if the names of all these negroes here, I testified as to their character, are on the jury rolls of Jackson County.

Mr. Leibowitz stated: I appreciate this is a fact of proving whether or not the jury roll contained the names of any colored persons, and I appreciate the difficulty in proving that if the Attorney General is going to insist on me proving it, but General Chamlee and I proved that to a mathematical certainty. I will have to ask the indulgence of the Court to get the jury roll, and we will

bring every living man on that jury roll if it takes twenty-five years to do it, and we will prove that they are white. If the Attorney General will not make a concession along that line I will be compelled to do that.

Attorney General Knight answered: The Attorney General makes no concession whatsoever, prove your case.

MARK TAYLOR, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

I am forty-one years old and live at Scottsboro. I was born in Limestone County. I have lived in Jackson County for twelve years. I lived before that time at Sheffield, Tolbert County. Since I have been in Jackson County I have never seen any negroes on a Circuit Court jury. There have never been any names of negroes in the jury box, not to my knowledge. I never heard of any. I own land, am a married man. I went to school a little and got to the sixth grade. I am on the school board of Jackson County, district number eighty-eight. I got my appointment as a member of the school board under the late law, being a qualified voter of the county. They allow me to vote. I was appointed on the school board this last year. The local trustees was elected by the school district and the restriction was they had to have qualified voters. I was elected in the district by the people in the community. Two other negroes were elected as school trustees in my county, Hugh Sandford and Lawrence Hunter of Scottsboro. They own property and are over twenty-one years of age and under sixty-five. Their character and reputations is good, I suppose, I don't know anything against their character. They are seemingly esteemed in the community in which they live for their honest and sound judgment. They are sober men, not habitual drunkards. Men that are not

afflicted with a disease. They own their own land. They can read and write. They lived in that county all their lives to my knowledge. Sandford is about forty something years old, and Hunter about the same. They are men who are reputed to be honest men. I know ex-trustees, former trustees of the school board down there, G. A. Edmondson, John Sandford and Robert Finley. They live at Scottsboro. They are over twenty-one years of age. They were trustees, these men, Sandford and Edmondson, when I came to the county, when I was admitted on the board. They served several years, I don't know just exactly. They are esteemed as honest men of good judgment and good sense, and good health in the community in which they live. They were never convicted for stealing or any crime involving moral turpitude that I know of. John Stapler served as trustee in that county about five or six years. He is an old man.

I know Will Watkins, S. C. Cole, Pleas Larkin, W. T. Moseley, M. T. Talley, Cam Rudder, Ed. Redd, John Branch, M. F. Timberlake, A. Joseph, K. D. Snodgrass, Louis Cole, Dave Stevenson, Bud Moore, C. S. Finley, Travis Moseley, Pleas Larkin, Elijah Matthews and Henry Ross. These men I have named are all negroes and live in Jackson County. I never knew of any one of them serving on a jury. They are esteemed men, good character in the neighborhood in which they live. All are esteemed as men of good character and they are of good health and sound judgment with the exception of Henry Ross; he seems to be mentally impaired in some way, feeble minded. He has been that way a year or eighteen months to my knowledge. At the time this case started two years ago, he was apparently in good health. This list of men I have called out here are men of good character and sound judgment, as far as my knowledge. Some of them live on the rural and I am not so well acquainted. No one of them is a habitual drunkard that I know of. No one of them has ever been convicted of stealing or any offense involving moral turpitude to my knowledge. They can read English, except Timberlake;

I am under the impression he can't read nor write. They are married men and have their homes. Some of them own land. They are over twenty-one years old. The majority of them, in the main part, are under sixty-five. Maybe one or two are in excess of that.

Cross Examination:

Timberlake belongs to the Baptist Church. I am not a Baptist. John Sandford is a Methodist. I am a Methodist. Toppery Snodgrass is a Methodist. All but Timberlake, he can't read and write, can do all of these things. Some of these people whose names I have called were on the school board or board of trustees, including myself. That is a local colored school. When I ran for the position I now hold, only the patrons of the school voted for me—colored people. I didn't run county wide. I don't know of any colored people who have been elected throughout the county, in a county wide election as a member of a school board. I do not know the names on the jury roll of Jackson County. I do not know whether or not the names Mr. Chamlee just read to me are on the jury rolls of Jackson County.

TRAVIS MOSELEY, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

My name is Travis Moseley. I live at Scottsboro and I am forty-one years old. I was born and raised there. I never saw any negroes sitting on the Circuit Court jury in Jackson County. I attend the Court House and witness trial and court proceedings just once in a while. I never heard of a negro sitting, or being called to sit on a jury in Jackson County. We have got school boards down there and schools. Lawrence Hunter, Mark Taylor and Hugh Sandford are trustees now. I was born and

raised with Hugh Sandford. He is a man of good character and good judgment, and good health, and not a habitual drunkard; he is all right as far as I know. I don't know how he got the position as trustee on the school board, because you see I have stayed on the road since 1917, I was just at home every three days. I am a railroad man. I own my own home. I have been married. I am a freeholder. They have never been convicted of any offense like stealing, or malicious shooting, anything involving moral turpitude. These men seem to be well esteemed in the neighborhood where they live. They can read and write. They are over twenty-one years of age and under sixty-five.

I am acquainted with many colored people or negroes in Jackson County at some stations. I know Mark Taylor, John Sandford, L. C. Stapler, P. Toliver, Will Watkins, M. T. Taylor, Cam Rudder, John Branch, M. F. Timberlake of Fackler, A. Joseph, K. D. Snodgrass, Louis Cole, John Stapler, Bud Moore, C. S. Finley, Pleas Larkin, Elijah Matthews and Henry Ross. Another negro I know in Jackson County, over twenty-one years of age and under sixty-five is Oliver Little of Scottsboro. He is a man of good character, stands well in the community, is sober and not a habitual drunkard and is not diseased or crazy. He owns land, is a married man and has got a family.

These names you have asked me about, all of these people are negroes. And all live in Jackson County. In my opinion they are men of good character and sound judgment and are esteemed and regarded as good citizens in the neighborhood where they live. No one of them on the list has ever been convicted of any offense for stealing or anything of that kind. They can read English. No one of them has ever served on a Circuit Court jury in Jackson County. They are all over twenty-one years of age, I think, and under sixty-five.

Cross Examination:

I know M. F. Timberlake, he lives at Fackler. I testified all of those who were called could read and write.

That is what they tell me, all the names of the men he said, could read and write, all of them lived around Scottsboro. Those names who do not live at Scottsboro, I couldn't say I know their standing. I do not know whether they are on the jury roll or not.

L. C. COLE, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

My name is L. C. Cole. I am fifty-two years old. I live at Stevenson, Alabama. I have lived in Jackson County fifty-two years. I have never served on a Circuit Court jury in Jackson County. I never knew of a negro serving on a jury in Jackson County. I was born at Stevenson. I went to school. I got as far as the seventh grade. I learned to read and write. I have never been convicted of any offense. I know Mark Taylor, John Sandford, L. C. Stapler, Will Watkins of Fackler, M. T. Talley, Cam Rudder, Ed. Redd, John Branch, A. Joseph, Hugh Collier, Dave Stevenson, John Stapler, Bud Moore, C. S. Finley, Travis Moseley, Pleas Larkin and Henry Ross.

Mark Taylor lives at Scottsboro. I am acquainted with his standing, he is esteemed as a good citizen or a good negro in the community in which he lives. I haven't heard anything else. He bears the reputation of being honest and intelligent. He is a man of good sound judgment, and not afflicted with any disease or anything of that kind. He is not a habitual drunkard, a man that gets drunk and stays drunk. He can read the English language. He has never been convicted of any offense that I know of. He owns his own property, has his own household and is a married man.

I know John Sandford. He lives at Scottsboro. I have known John quite a while; I think he is all right.

He is an honest man and intelligent. He is esteemed and regarded as a good citizen in the community. He is sober. He has never been convicted of any crime. He is not a habitual drunkard. He is a man of sound judgment. I think he has a good mind and good judgment. He is over twenty-one years of age and under sixty-five.

I know Will Watkins of Fackler. I have known him quite a while, twenty-five or thirty years. He is esteemed, and is generally reputed to be honest and esteemed in the community for his integrity and good character and sound judgment. He is not a habitual drunkard. He has never been suspected of being diseased mentally. He has never been convicted of stealing or any offense involving moral turpitude that I know of. He can read the English language. He is a negro citizen of Jackson that I know of; he is an older man than I am. He might have served on a jury.

I know M. T. Talley of Stevenson. I would not give him the same good reputation I did for this last witness Watkins. I wouldn't give Matt that, he had a stroke recently. Two years ago he was all right. At that time I would have given him a good reputation. A. Joseph and Hugh Collier are all right and Dave Stevenson is all right. Those I know we have been discussing here, have the qualifications specified in these questions here, that is they are esteemed in the community for their integrity and good character and sound judgment. And they are not habitual drunkards, and have never been convicted of stealing, and they can read and write. They never served on a jury in the Circuit Court of that County to my knowledge, neither in my life or theirs. I do not drink liquor and get drunk. I have no disease or anything wrong with me. I have had no stroke, or am not insane. I have an enlarged liver. That does not affect my judgment. You might put down Charlie Berry and Horace Young that have the qualifications

for jurors. They live at Stevenson. They never served on a jury, they are too young. They are esteemed as good citizens and have good character.

Cross Examination:

I did not say I wouldn't give M. T. Talley a good character because he had a light stroke. His character is all right, but I said he might be sound minded, his character is all right, good as anybody's. This Berry I mentioned just a minute ago, I meant he was too young to serve before this time. I say these people are esteemed in the community as men of sound judgment. By the word "esteemed" I mean law abiding, good citizens, something like that. I mean when I say a man is esteemed for his sound judgment that he is a man that has got a good mind, knows what he is talking about, what business is.

The following then occurred:

Q. Do you know what the word "esteemed" means? A. I ain't got my dictionary.

Q. All of these names you have called are citizens, you say, of Jackson County? A. Yes, sir.

Q. Did you ever help prepare the jury rolls for Jackson County? A. No, sir.

Q. Can you tell me as a matter of fact whether or not those names are on the jury rolls of Jackson County? A. No, sir.

Q. You don't know whether they are or not? A. I don't know whether they have ever served.

Q. I am talking about are those on the jury rolls? A. I guess they are on the rolls.

Mr. Leibowitz: I move to strike that out, the answer what he guessed.

The Court: Motion overruled.

Mr. Leibowitz: I except.

The witness further testified: I couldn't testify whether they are on the rolls, I haven't seen them. I don't visit court very much, I never have time, I couldn't tell you. I haven't been to court much. I am a railroad man. Of my personal knowledge, I don't know whether they ever served on a jury or not. I don't know they haven't.

Re-direct Examination:

Q. He asked you about the jury rolls, do you know what he means by jury roll? A. A jury roll is twelve men for jurors.

Q. Your idea of a jury roll is twelve men sitting in the box? A. Yes, sir.

Q. Did you ever see a negro in the box in Jackson County? A. No, sir.

Q. That was a jury roll he was talking about? A. I haven't seen that?

PLEAS LARKINS, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

My name is Pleas Larkins. I am fifty-six years old and live at Larkinsville, Alabama, in Jackson County. I have lived there all my life. I went to school and learned to read. I own my home. I never sat on a jury in Jackson County. I never saw negroes on a jury in Jackson County. I read the newspapers. I never read about negroes serving on a jury in Jackson County. I am acquainted with some negro men in Jackson County and some few at Scottsboro.

I know Mark Taylor and John Sandford. I am acquainted with the general reputation and character of those men. I have been acquainted with Mark Taylor about seven or eight years I reckon. He is a man gen-

erally reputed to be honest and intelligent, and esteemed in the community for his integrity, good character, and sound judgment. He is over twenty-one years of age and under sixty-five. He is not an habitual drunkard, a man that gets drunk. He can read. He is a married man with a family.

I know John Sandford. He possesses the same qualifications you asked me about Mark Taylor. I know L. C. Stapler. He possesses the same qualifications as this negro, Mark Taylor. I know P. Toliver of Hollywood. I would give him the same record as I would the others. I know Will Watkins of Fackler. I would give him a good character, the same as the others. I know Cam Rudder of Stevenson. I would give him the good name and good character, the same as I would the others. I know Louis Cole. I would give him a good name and character, he is qualified. I know Bud Moore. I would give him a good name and good character and good qualifications. I know C. S. Finley. I would give him a good name and good character. I know Travis Moseley. I would give him a good name and good character. I never sat on a jury myself. I was never called as a juror, or ever called to come to court as a juror and excused after I got there.

Cross Examination:

I testified as to all of these people who I said possessed good character, as far as I know. When I say they are esteemed for sound judgment I mean they are esteemed above the common class of people. I know they are not, to my knowledge, on the jury. I know they are not because I never heard of it. I have never seen the jury rolls of the county. I have never looked in the box. I have never helped select the jurors of my county. I don't know whether they are in the box or not, but I said I never heard of them. I do not go to court every time court is held. I don't know of my own knowledge whether they ever served on a jury.

Re-direct Examination:

We have school boards in our county. There are no colored men as trustees on the school boards in my town. I suppose there are in Scottsboro, but not in my town, it is kinda of a small village.

Re-cross Examination:

Those are colored schools. As a matter of fact the trustees are not elected except by the patrons of the school, the colored people.

Re-direct Examination:

Defendants' attorney asked the witness the following question:

Q. Is it a matter of general understanding and common knowledge that negroes never serve on juries in Jackson County?

Attorney General Knight objected. The Court sustained the objection and defendants' counsel excepted.

JOHN STAPLER, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

My name is John Stapler. I live at Scottsboro. I came there in 1896. I never saw a negro on a jury in Jackson County in the last thirty years. They have a school board at Scottsboro. I know who the members are now, they have had several, Mark Taylor, Hugh Sandford and Hunter. Two of them I have known all of their lives. And one of them, Taylor, is a son-in-law of mine, and I have known him for the last ten or fif-

teen years. These men I have mentioned are men generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character and sound judgment. They are sober men, not habitual drunkards. They are regarded and reputed to be honest men. They have never been convicted of stealing or anything of that kind involving moral turpitude. They are married men and are negroes that live in Scottsboro or Jackson County. They are over twenty-one years of age and under sixty-five years of age. I know Mark Taylor and John Sandford. They live in Scottsboro. I know their qualifications as you have asked me about these other fellows. They are supposed to be honest men, of sound judgment and good citizens. I never heard nothing against them. Supposed to be men of honesty and intelligence, and men of sound judgment. Good men, law abiding citizens and not habitual drunkards. And men who never have been convicted for stealing, or any crime involving moral turpitude that I know of. All married men. All of them own their property there.

I know Pleas Tolliver of Hollywood. He is a man of good character like these others I have named, as far as I know. I have been knowing him for forty years and never heard anything. I know Will Watkins of Fackler. I never heard anything about him, of course he don't live in my neighborhood, he lives ten or twelve miles from me, in Jackson County. I have known him thirty-five years. I know Cam Rudder who lives in Stevenson. I am pretty well acquainted up there. I know Ed. Redd and John Branch of Bridgeport. I would give Redd a good name and character. I never heard anything else of him.

I know A. Joseph of Stevenson. I give Joseph a good character and name. He always has had as far as I know. I know Louis Cole. He bears a good name, also good character and sound judgment. I know Dave Stevenson. I never heard nothing wrong with him. I know

Pleas Larkin, Henry Ross and Elijah Matthews. I never heard nothing against them. I would give them the reputation of being esteemed as good citizens in the neighborhood in which they live, and possessing sound judgment and good character. All of these men I mentioned, or all these men we have been talking about, are negroes living in Jackson County. I never knew or heard of one of them sitting on a jury in the Circuit Court of Jackson County. I have lived in Jackson County since 1873. I never served on a jury myself.

Cross Examination:

I say those names Mr. Chamlee called to me are men who are esteemed in the county as men of good reputation and sound judgment in their community. They always had as far as I know. I mean by esteemed—esteemed people, never had nothing wrong with them. Lots of them have the same character they have up there, I am telling about those he asked me about. I don't say that I have any reason to complain of any justice done me by a jury in Jackson County. I have never been convicted of any offense. I have never seen the jury rolls of Jackson County. I have never looked in the jury box of Jackson County. I cannot swear those names are not on the jury rolls of Jackson County. I come to court very near every term I am around there. I live in town there right close. I don't know the list of names in that jury box. I don't know whether they are white or black. I made the statement I had never seen a negro on a jury in Jackson County. I haven't seen them on juries in Jackson County in my lifetime.

WILL WATKINS, witness called on behalf of the defense, after being first duly sworn, testified as follows:

Direct Examination:

My name is Will Watkins, I live at Fackler in Jackson County, Alabama. I have lived there sixty-six years.

I never sat on a jury. I never saw a negro on a jury in Jackson County. I go to Scottsboro sometimes and attend court sometimes. I went to school. I can read the English language and read the newspapers. I have have never been convicted of any offense. I own my own home. I am a married man.

I know some of the negroes that are living down in Fackler, Lessie Austin, he is about thirty years old. Milton Timlin, Robert Stewart, Henry Waggoner, Jesse Harris, Harry Harris, Will Harris, Ransom Stewart, Lucien Scott, Church Stewart, Alvis Stewart, Will McCarver and Hubert Stewart. I am acquainted with the general character of those men. That list I have named are men who are generally reputed to be honest and intelligent, and esteemed in the community for their integrity, good character, and sound judgment. I would give them good names, good character. None of them are habitual drunkards from my knowledge. None of them has ever been convicted for stealing or anything like that, any offense involving moral turpitude, to my knowledge except Will Harris. They are married men and got families. Over twenty-one and under sixty-five years of age.

I am sixty-six years old. I know at Scottosboro, John Stapler, Mark Taylor, and John Sandford. I would give them a good character the same as I would those at Fackler. At Stevenson, I am acquainted with Cam Rudder and Louis Cole. I know A. Joseph, a hotel man, hotel porter. I know Hugh Collier, Louis Cole, Bud Moore, C. S. Finley, Travis Moseley, Pleas Larkins and Henry Ross. As far as I know all of these men I have named, are generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character, and good judgment, in the community in which they live. I have lived in that county all of my life, at Fackler. I have known those at Stevenson, maybe, twenty-five or thirty years. I did not ever

Cross Examination:

know of any one of them ever sitting on a jury. And all of these boys, these men, are over twenty-one years of age. I don't know how old they is, I know they are over twenty-one.

I know Cass Finley. His boy was convicted just shortly ago. Cass was not convicted himself that I know of, I never heard of it. I didn't understand I said these people whose names have been called, are citizens of good standing, and they are esteemed for their reputation in the community in which they reside as men of sound judgment. I don't know what esteemed means. I don't understand so many words.

Re-direct Examination by Hon. G. W. Chamlee:

Q. The word esteemed means, in the community in which a man lives the estimation in which he is held in the minds of his neighbors and friends, whether he is esteemed as a good citizen or bad citizen. Now with this explanation, I will ask you if the men you have testified about here in this trial are esteemed as good citizens in your opinion in Jackson County? A. Yes, sir.

Re-cross Examination by Attorney General Knight:

I never looked at the jury rolls of Jackson County.

L. C. STAPLER, witness called on behalf of the defense after being first duly sworn, testified as follows:

My name is L. C. Stapler. I live at Limrock, Jackson County. I am seventy-six years old. I have never seen any negroes on the jury in Jackson County in the last thirty years or any other time in Jackson County. I am acquainted with negro men in the neighborhood where I live that are good citizens and of sound judgment. Pleas

Larkins, Lewis Sandford, John Sandford, Mark Taylor, Will Watkins, Louis Cole, Cass Finley, Matt Talley, M. T. Talley. I know Ed. Redd of Stevenson, John Branch, A. Joseph, Hugh Collier, Louis Cole, Dave Stevenson, John Stapler, Bud Moore, Travis Moseley, Elijah Matthews, Henry Ross, Reverend Crutcher. They have got a school board at Scottsboro, the members of that board, the trustees are negroes. They always had them at Scottsboro. There is a large number of negro men in Jackson County. These men I have named that I know, are generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character and sound judgment as far as I know. They are not habitual drunkards, men that make a habit of getting drunk and staying drunk until the whiskey gives out. These are sober men, I think. None of them has ever been convicted of stealing, or anything of that kind. I don't remember any of them that has been convicted of a crime like stealing, that reflects on him and involves some violation of the law, or misconducts, or convicted of stealing or anything. What I mean to say is that these men are honest good citizens, all having good character, truthful men, always proved out that way. These men are all negroes. I never know of either one of them being summoned for jury duty or sitting on a jury. They are over twenty-one years of age, this crowd I named and some are under sixty-five. It is a matter of custom in Jackson County that no negro can sit on a jury, that has been a custom for sixty years. A man being esteemed as a good citizen means a man that has got a good character, a man that don't steal and tends to his own business, a man that has got a good character, a man that lives correctly and who his neighbors speak well of.

Cross Examination:

I am getting on very well in Jackson County. Nobody has imposed upon me there. I live at Limrock, twelve miles outside of the county seat, four miles from Larkins-

ville. I know A. H. Cotton at Larkinsville, he is a pretty fair man as far as I know, he is a white man. He possesses a good moral character and is esteemed in the community in which he lives. He is an able bodied man. He has never been convicted of any offense involving moral turpitude that I know of. I couldn't tell you if he is over sixty-five, I have been knowing him for a long time, I thought well of him always. I haven't had dealings with him. I don't know whether he is on the jury rolls of Jackson County.

The names of all those others he called to me are not on the jury rolls of Jackson County. I don't know as I have ever seen the jury roll. I have never looked in the box. Their names haven't been accustomed to be in that box. I never looked in that box or at that jury roll. I never helped the Jury Commissioners select the jury roll of Jackson County. I do not know the names of all of the persons on the jury roll of Jackson County. I didn't know any was on it that was colored. I have been in Court around there several times and I never seen no colored men on the jury. I wasn't allowed to look in that box. I don't know whose name was in that box.

I know Mr. W. C. Shelby of Larkinsville. I know his general reputation. I reckon it is all right, I don't know anything about him. I never heard anything against him. Well I haven't heard anything definite against him. I couldn't say he was esteemed. I don't know. I can say all of those names Mr. Chamlee called to me are esteemed. I am supposed to know more about my race than I do about the other race. I do not know whether Mr. Shelby is in the jury box or not. I don't know who is in that box. This ended the testimony offered from the transcript of the evidence on the former hearing. It begins with the affidavit of Marie B. Owens and covers everything down to this point—pages 38 to 86 of the bill of exceptions. The questions and answers

as shown by the transcript of the former hearing was read to the Court in the case at bar. It is not so set out in this bill of exceptions but appears herein in narrative and abridged form.

Saturday, November 25, 1933.

J. V. HARING, was sworn on behalf of the defendants, and testified as follows:

Direct Examination:

My full name is John Vreeland Haring, I am 64 years old, I have made a study during my life time of hand writings, questioned documents, including typewriting, inks and paper. I have been in the penmanship profession for over 40 years, designing leaflets, alphabets for educational purposes, lettering, plain and ornamental, and I have been giving opinions respecting questioned handwriting, typewriting, for over 20 years, and have testified in court respecting these things. I was associated in the beginning with Donald T. Ames, as an employee. Donald T. Ames was the first that devoted his whole time to the examination of questioned documents in America. I might add that I was not employed by Mr. Ames in that capacity. I was employed by him for the purpose of designing alphabets for educational purposes. While employed by him, I did not directly have occasion to study under him. My desk was immediately next to his. I heard conversations pass between he and his clients. I was in his employ when he wrote his book. He was a recognized authority in his books on handwriting and allied subjects. He published a paper called the "Pens Word Journal". I think he published that for nearly 20 years. I left the employ of Mr. Ames twenty-five years ago. Since that time I was employed by the Chairman of the Commission for German Government loans, I should say for about two years. I did other

work in America on questioned documents in relation to the German Government loans. I did work for the Bar Association in New York in the
case, so-called. That was a tremendous investigation that lasted a number of months, and hundreds of documents were involved in that case. I worked for the Legislative Committee, the Industrial Investigating Committee of New York City along the same lines; that included tracing stolen letters in the Mowell case: I have executed the frame work for the Board of Regents for the City of New York, the Board of Education of the City of New York; the Board of Education for New York State; the Board of Education for Newark, N. J.; at Asbury Park I did work there in connection with the petition for a change of form of Government; I did work along the same line for the City of Neptune, N. J.; I have done work in connection with the election records in a Federal case recently in New York, then I made an examination for them. I have testified in New York, New Jersey, Maine, West Virginia, Florida, South Carolina, Massachusetts, Rhode Island and Illinois, and have made examinations for other cases in other states as well. I testified this year in the Lewis Willard case; I testified for the defendant in the State of New Jersey in the Sarah B. Mowell case. I made the examination and withdrew from the case. Later I was subpoenaed for the defendant. I testified for the defendant both in the criminal case, and in the civil case which followed. I was called as a witness in the O. B. Limehouse in a Federal case at Charleston, S. C. I have testified many times for the Federal Court in New York. I performed professional services in the Jackson will case, but I withdrew. I testified in the Duke will case; in the Crocker will case, I simply made an examination. I was employed in a professional capacity in the Hampson-England case. The Nelson Q. Bartley murden case, that went through several months, and in the J. D. Hallen case, Portland, Maine. I was employed for the Radio Corporation of America for making an examination, and in the Russell H. Conwell case, "Acres of Diamonds",

for an examination only, that was in Philadelphia. I was employed in the Van Sickle murder case, in New Jersey, the Patsy De Piero murder case for the prosecutor, by the Thompson Legislative Committee of New York, in the Stole case I testified, in the Harris case I made an examination. I testified in the Halls-Mills case, New Jersey for the prosecutor. I also made an examination in the Kearns-Dempsey case, New York and New Jersey and rendered an opinion. In the Coakley case, Boston, Grand Chapter, O. E. S., New York, I made an examination and testified. I made an examination for the Daily News, a newspaper in New York. I have made examinations for the New York Cotton Exchange in New York. Hon. Guy Sturgess, Attorney General of Maine, he called me on two cases and so did the Attorney General of New York. I worked for the Prudential Insurance Co. for a considerable number of years. I saved the Plate Glass Company considerable money on two occasions. I worked for the New Jersey State Department of Banking. I was in the Starr-Faithfull case for Mr. Faithfull. I made an examination and report. I have also done work for the Mayor of Jersey City, for Oscar Kroph, Chicago. In the Raffa torch murder case, Bronx, New York, I was called by the prosecutor and testified. I worked for Merrill & Merrill, Skowhegan, Maine, and Logan & Grace, Charleston, S. C., that is the O. B. Limehouse case. I had three cases for Johnson, Allen & Bosarge, Bartow, Fla. I have made examinations and testified for The National City Bank of New York. I made an examination for Hillis & Hills, Longansport, Indiana. I was associated in the Abraham Levine murder case at Augusta, Maine. I also have a residence in Florida. In addition to these cases that I have testified about, as having made investigations and also testified, I have also had other matters during years of experience. I have given my whole time to it for a number of years.

I came here at the request of the defense, the request coming through Mr. Leibowitz. I expect to be paid $50.00

a day in this instance. I have at your request made an examination of certain writings, markings and other hieroglyphics in the two volumes now before me, which are in evidence, and which constitutes the jury roll of Jackson County, Alabama, contained in the two red volumes, respectively, on the back of which is the following: "Jury Roll, 1922, Jackson County", one book containing indexes running from 1 to 21, inclusive, each containing an individual alphabetical index, the second book containing an index running from 22 to 41, inclusive, which also contains each an alphabetical index. I made an examination on the pages my attention was called to on these books. I made that examination in that room there (indicating room to witness' right; to the judge's left). I went there because I could have the sunlight. I used a microscope and an ordinary magnifying glass. This microscope is supposed to give high power magnification many times. According to the enlargement I employed in the neighborhood of twenty. Between ten and twenty.

In the volume beginning with number one, and under the letter "T", a name written on the 13th line, the name of "Mark Taylor" written in the book as "Taylor, Mark —Presser, Scottsboro", is written in green ink. Two lines which are apparently red lines were made of "crayon." They are called pencils, irrespective of their name. On this page, part of the name "Mark Taylor" touches the red lines, part of the name and part of red lines touch. I examined that carefully beneath the microscope and the magnifying glass. A portion of that writing, "Taylor, Mark, Presser, Scottsboro" is over the red line, that is to say that a part of that name, a part of the letters of that name, for instance the "T" in Taylor and the "Y" in Taylor, the "R" and "M" in "Mark" go into that red line. They are in the field of the red. The red line was put there before the name "Taylor" was put there. The "P" in "Presser" comes down very close to the red line, but does not get far enough into the red field to determine one way or the other, but in "Scottsboro" the "S", "C" and "O" cross into the field of

the red mark. With reference to the entire entry, "Taylor, Mark, Presser, Scottsboro" my opinion is that entire writing was put on the page after the red lines were drawn. I examined two or three names above the name Mark Taylor, also apparently written in Green ink, and compared the color in the ink with the name Mark Taylor. It was written subsequently, because the last one is down on the line. It is the same nature of ink but just how long after it was put there I am unable to say:

The Court asked the following question:

Q. Can you tell that it was put there afterwards, other than by its location on the page? A. I am unable to answer that question in that one case.

The witness further testified:

I would say those four names were not written continuously. I would say that the three names above "Mark Taylor" were written continuously. There are four Taylors there in the class, and the three first have a very clear type "R"; that is the three at the top. The "R" in Taylor that is in question is differently constructed, more like a letter "I", and is not the same type, indicating to my mind that it was made at another time. In my judgment they were all in the handwriting of the same man. My attention having been called to defendants' exhibit to the testimony of Kelly Morgan, "E. P. K." meaning stenographer, and to the writing there on the eleventh line, "Taylor, Mark, Presser, Scottsboro" I would say that the man that wrote that "Taylor, Mark" is the same man that wrote these four names on the jury roll under the letter "T", including the name of Mark Taylor you are inquiring about.

I have also had my attention directed to some numerals underneath the red line, "3/20/31". They were

written with pen and ink. I have just now looked at these numerals and can not tell you with reasonable certainty whether these numerals are superimposed on the red line, or vice versa. I haven't examined these. This is a very unsatisfactory light. (The witness then retired to jury room as before and returned into court and testifies:) I have made that examination during this interval. I can now state that "3/20/31"—the numerals, are under the red line. (The reference is to Precinct one, under the letter "T", the last name above the red line.)

Turning to precinct No. 3, letter "J", to the name "Rudder, Cam" as entered on that page, that is a deep green ink. On that page that "Rudder, Cam" is entered on, another name is written in ink, "Jones, J. T.". My examination discloses as to the color of that ink that it is a much deeper color than the Jones name, the "Rudder" name is a much deeper colored green than the Jones name. It is the same way with the margin; the margin corresponds with the Jones, and the ditto mark beneath there corresponds with Rudder out in the residence column. There being a difference in the ink would suggest to me that they were done at different times. I cannot tell whether these names were written with a fountain pen. That is difficult to know, on account of the flow of ink. Sometimes the ink doesn't flow freely, and then again it does, it would depend somewhat on the condition of the pen. There are certain parts of the letters of the name "Rudder" that touch the red line, that is a part of the staff on the left hand side of the letter "R" goes into the field of the red line. It is written over the red line, on top of the red line. Then in the "D" a part of the bottom of the "D" touches the red line. Then in the name "Cam" the *a*, part of the *a* touches the red line. From my examination I would say that it is written over and after the red line. I mean the red line was there first. All of the parts of the letters that touch the red line I have mentioned.

Proceeding now to the same name, "Rudder, Cam", under the letter "R", same section, in this instance, the letters do not touch, "R-U-D-D-E-R" are away from the red line; also in the Cam, but under the caption "Occupation" in "Merchant" there, the "A" in "Merchant" goes into the field of the red line. In my opinion it was written after the red line on the paper. That means it was written over the red line, or superimposed on it. With reference to the five other names, well, the space seems to be restricted there, and the two names immediately above descends down and touches the blue printed line, while in this question one, the "Rudder" is up and away from the printed line a considerable distance, so that the adjustment to the column is out of balance with what we find of the other signatures there. The color is the same, but a deeper, more distinct green. I would say the same ink did not write the last name that wrote the five names that precede it. It is a deeper colored ink, made at another time and were not simultaneously written, not a continuous writing. In my experience I find that the same man writes with the same uniformity each time. To a certain extent it is typical.

Turning to Precinct Ten, in this volume, under the letter "S", and I call your attention to the name, "Snodgrass, K. D." That is also in a space immediately above the red line. I have made an examination of that in the same manner that I made of the other names I testified about some parts of the letters intersect the red line. The name was written after the line was ruled,—over. Parts of that name, "Snodgrass, K. D." and superimposed the red line, the line connecting the "N" to the "O." That is in a deeper colored ink than the writing above. It is a deeper green, and the name is written way over the base line as compared with the three signatures, above. The signatures above approach the base line, and are comparatively the same; typically the same. I can tell by comparing the character of these several specimens of writing,—from my experience as

a hand-writing expert, with reasonable certainty, whether or not there was a conscious attempt on the part of the writer to avoid that red line in the body of that writing. My opinion is the arrangement of the name, adjusting itself to the base line, as compared with the several names above, and further, there is a different "S" in this questioned signature. The loop of the "S" is larger and the whole signature out of slant, indicating it was made at a different time and not contemporaneously with the others. I know he had that consciousness by the way the signature adheres to the base line, different from those above. It indicates that either the mind or muscle had a different process than what would have been in writing those above (exhibit to Morgan's testimony was handed to witness). Line 16 adheres to the base line the same as in the signature that is in question. There is nothing to indicate to my mind that he had any particular purpose in view while he was writing that name on the exhibit. This was written naturally here compared with the five or six signatures on this column here. There is no red line on this request writing. I do not know whether or not when the man wrote this exhibit request, he had the book in front of him. He didn't copy the questioned one. He got closer to the other. I do not think he copied any of them. I can say with reasonable certainty that the last name is not written naturally. It indicates to me the appearance of what we might term guarded writing. I am speaking of the last name, the questioned one. The one on the exhibit is not guarded. That is in harmony with the rest. Many things have an affect on writing, particularly when a man is writing by request. This, however, seems to be natural. I can tell that it is natural by comparing it with the writings in the column here. Turning back to the name "Mark Taylor, and looking at the ink that is written with and comparing that with the ink Cam Rudder, under the letter "J" and Cam Rudder under the letter "R", I can tell with reasonable certainty whether these names were or were not written with

the same ink. I have looked at that carefully,—yes. They appear to be written with the same type of green ink, but whether they were written at the same time, it is impossible to say.

Precinct 14, the letter "L", and the name of "Larkin, Pleas". That "Larkin, Pleas" was written after the red line was put there. I come to that conclusion on account of the passage of part of the letters of the name into the field of red of the ruled lines. I have compared the ink, the color of the ink with the ink used in writing the three names that precede it. I can state with reasonable certainty whether or not they were written with the same ink. As to being green ink it is the same, but the green ink in the questioned ink is a deeper green. The "K" in Larkin, a part of that crosses the field of red; the capital letter "P" touches in places, and a little of the bottom of the "H" touches. In the questioned one, Larkin, the "L" is followed by an "A", but the pen was lifted before the "A" was started. In the name immediately above, the line is continuous, the "L" runs into the "A" connectedly, and in the names above the capital runs connected into the next letter, and in this questioned name, it doesn't. The pen is taken off the paper, and then the next letter, "A" was started.

Turning to Clemons, Daisy, precinct No. 21, under the letter "C". The tail of the "Y" in Daisy intersects the red line. It is in green ink and is under the red line. I did not know that is the name of a white man. Proceeding to Garland, under "G" in precinct 21 there is some contact with any portion of the name Hugh B. Garland with the red lines, just the tip end of the staff of the "G". I cannot determine whether the red line covers the ink or not.

Proceeding to the letter "M", precinct No. 21, Travis Moseley. I am inclined to the opinion that name Travis Moseley was written by the same hand that wrote the ten names preceding it, comparing the name Travis

Moseley, and the other nine or ten names that precede it, in that column: In the first place it is written with a deeper ink, it is written with green ink, but some deeper ink, and the particular ones, outside of this questioned one, harmonizes as to color among themselves, being a lighter green, and as to the arrangement on the line; these preceding names are very typical in their arrangement in the column. The last one, the one in question seems out of harmony in the respect that it is over to the right further, it is smaller in size, and written with a different pen, at least at a different angle. I cannot tell with reasonable certainty, from the character of the writing, whether there was a conscious effort on the part of the writer to write just that way, other than what I have already stated. Going to the red line, "M" the capital letter "M" touches it, also the small letter "O" and the "Y" in Moseley but the red line I am looking at, there are two red lines, and the top red line that these letters touch is very, very light, and I see no way of ascertaining whether they are over or under. The "Y" crosses the lower red line. I mean that it is on top of it, that is my opinion of it. I made a very careful examination down below there. The red lines were put on the page before Travis Moseley. I have no way of telling whether the two red lines were made at the same time or not. With regard to the numerals "3/20/31", the date line there, no portion of the name "Moseley" comes in contact with any of the numerals. But they do with the lines separating the numerals, the one separating the 20 from the 31. The tail, or extension of the "Y" in Moseley comes in contact with the lines separating the numerals. They are in ink and the letter "Y" in Moseley is in ink. I have examined these particular figures. The "Y" covers the date line. I can't see that with the naked eye. I can't answer for any one else. There is no question about it in my mind, because as the "Y" that intersected that date line came in contact with the date line, it cleaned off some of the ink that was on that line

originally. I can state with reasonable certainty that the name Travis Moseley was written in there after the date 3/20/31. There is no question in my mind at all.

Turning to the letter "S", precinct No. 21, and the name "Hugh Sanford". I have examined that name. I don't know the color of the man. I have examined this record. The letter "F" in Sanford, the lower staff, is through the red lines, it is in the same field. The green writing of the names is over the red line. It comes in contact and over in the Hugh, and the "G", the "D" in Sanford enters the red field, the "H" in Hugh enters the red field. In Janitor the letter "J" is over the red. The ink is a little heavier than the other writings. The capital "S" in Sanford does not correspond with the seven or eight "S's" in the names immediately above. It is a different sort of an "S" and is not in harmony with the "S's" preceding and immediately above it. Writing at a different time,—that with the other things I have been over in combination would indicate it. But the ink being heavier than the other, alone, would indicate a different time of writing. Not so much to the age. It is the same kind of ink, but a little deeper in color. Changing pens, or filling the pen might make a difference. The older the ink, the darker the writing would be, because the ink would be thicker.

Turning to precinct No. 24, letter "R" to the name Roscoe Ryan. I find that the "R" in Ryan, and the "Y" in Ryan and a little of the "A" and part of the "N", and the "R" in Roscoe and the second small "O" in Roscoe—no, I didn't make any note of that. I thought that I had examined it. I am inclined to the opinion that the green is over the red. I made no record of this name when I was in the side room.

With reference to Travis Moseley, it is demonstrated to me beyond a shadow of a doubt that the name referred to was written after the date 3/20/31 was en-

tered in this volume because of the fact of the meeting of the ink of the name Moseley and the meeting of the ink of the date line 3/20/31 whereby the ink of the name crosses the line and over it, indicates to me conclusively that the date line was there before the name of Moseley. The date line does not intersect the red line.

Under the court's instruction witness then retired and made examination of certain names in certain precincts as follows: Precinct No. 21, "B", Ben Berry; Precinct No. 21, "J"; Precinct No. 16, "T"; Precinct No. 26, "N" and "R"; Precinct No. 27, "B"; Precinct No. 28, "R".

Questioned by the court the witness testified:

In Precinct No. 21, "B", the red lines are over the bottom part of the "Y" in Berry. In Precinct 21, "I", the bottom of that "G" in Spring, is over the red lines. "J" in Precinct No. 21, that date line there in my opinion the red lines are under these marks, the date was written after the red lines were put there. Precinct 16, letter "T", in my opinion, in the word Spring, on that page the red lines are over the tail of the "G". Precinct No. 26, letter "N", the date line is over the red lines. In other words, the red line was there first. Precinct No. 26, letter "R", the date line is over the red line. Precinct No. 27, at the letter "B" the "G" in Spring is over the red line. The writing of the date line is made after the red line was put there. In other words, over the red line. Precinct No. 28, letter "R", the date line is that over the red line. The writing is over the red line. The date was written after the red was put there. The line was there first.

Re-direct Examination:

I looked at Roscoe Ryan, precinct No. 24, letter "R", again while I was out. That is one I am uncertain

about, that's the reason I didn't make note of it before. The "Y" crossing the red. I think the red crosses it, but I didn't find enough to tell me definitely. I am inclined to the opinion that it was put there after the red was there. I am not definite about it.

Mr. Leibowitz then stated: Your Honor, last night subpoenas were issued to six or seven negroes whose names are on this jury roll, Exhibits "A-1" and "A-2", we have discussed these men with the expert. Your honor has ruled, I don't think the record shows it,—that you will not hear further testimony on these two volumes.

The Court then said: I closed that last night.

Mr. Leibowitz answered: What I propose to show by these witnesses is that they are familiar with every negro in Jackson County and that they are prepared to prove that outside the names that have been disputed that there are no names of any negroes on the rolls of Jackson County, and that there were no names of any negroes on the rolls of Jackson County for a period embodied in these jury rolls, beginning in 1922. I merely put that on the record that your honor may be apprised of the proof tendered, so that the record may be kept clear.

The Court said: Suppose I pass on that. I am not going to wait for you to get these witnesses here.

Mr. Leibowitz asked: Your Honor told me you would not hear them?

The Court ruled: And I'll tell you exactly why. Under the law it was your duty to come to court on Monday morning prepared to submit whatever preliminary motions you desired, and the evidence supporting them. The law made that your duty. You cannot be taken by surprise, because in the testimony that was

taken on this same motion before Judge Horton last Spring, March, I believe, there was therein testimony, positive testimony, by one of the commissioners, jury commissioners, that there were negroes on the Jury Rolls of Jackson County. That gave you notice of that fact, and it was your duty to be prepared to meet it. Therefore, I decline to proceed further along that line.

Mr. Leibowitz excepted to this ruling.

Mr. Leibowitz stated further: Now, your honor, we have had subpoenaes issued for Judge Hawkins, the sheriff of Jackson county, and the judge of the probate court, who had these books in custody, and they have failed to answer these subpoenaes, and I cannot proceed to close my case on this motion without the testimony of these witnesses.

The Court stated: In reply to that I will say that on Thursday morning when this motion was called these witnesses did not answer, and I offered to give you attachments for all of the witnesses you wanted, and no attachments were called for. In addition to that you said that you wouldn't ask for attachments; that you would attempt to reach the witnesses on the telephone, as I understand it.

Mr. Leibowitz remarked: May I state in connection with that, your honor, that I did not propose to issue attachments for a Judge of any court in Alabama; we are asking your honor's indulgence now so that the hearing may be completed with these witnesses, we want to endeavor to procure their attendance here without the issuance of any bodily attachment.

The Court ruled: I can't do that, for the reason that at the time on last Thursday, when the motion was called up, I informed you then that Judge Hawkins said that he had a sick child and didn't want to leave that sick child, but if absolutely necessary, to let him know and

he would undertake to come. I conveyed that information to counsel for the defendants at that time.

Mr. Leibowitz then took exception to the court's ruling, most respectfully, on the ground that the court has refused the proof tendered and mentioned, and has refused defendants an opportunity, at this time, to counsel to bring into court, or endeavor to bring into court, these witnesses that counsel for defendants deems necessary to use. That is the exception, your honor, and I think that's all. The facts are that on the day before the last witness, J. V. Haring, was examined the defendant completed the examinations of all his witnesses present. He then asked the Court not to close the hearing, that he had an expert witness on his way from New York. The Court then adjourned until the next morning when the expert witness, J. V. Haring, appeared and at the request of the defendant court recessed for from one to two hours for the witness to examine the record. When this witness completed his testimony then the defense asked for further continuance so that he could get other witness to court—then follows the proceedings recorded on pages 161 to 163 of this bill of exceptions immediately following Haring's testimony.

This was all of the evidence on the motion.

The Court then rendered its opinion on motion to quash indictments as follows:

Gentlemen:

The question here is whether or not the officers of Jackson County, whose duty it was to prepare a jury roll and to place the names of qualified citizens in the jury box, have declined and failed to place the names of any colored men on the jury rolls or in the jury box, because of his color or race. That is the chief question. A good deal of evidence has been taken and I have tried to listen to and understand all of it. In that was evidence submitted to me, or read to me, that was taken

on a similar motion in this case before Judge Horton last spring, and there was at least one witness, that I recall, if not two witnesses, that testified positively then that there were names of the colored race on the jury roll, and were on that jury roll at the time the grand jury was drawn that returned this indictment. There has been a good deal of evidence offered that was legitimate, to meet that statement of these witnesses, the weightiest of which, in my judgment, is the testimony of several witnesses that they had not, for many years, if ever, seen a colored man on a grand jury in that county. That evidence, if believed, and I have no reason to disbelieve it, in the absence of anything in the record attacking their truthfulness and honesty; if that is to be believed, as I see it, that in and of itself would create a presumption, in my judgment, from which might be drawn the conclusion that the colored race was kept out of the jury box. But that is a presumption only that the law considers, and is subject to be met and explained, and certainly it is explained to some extent when a witness, whose sworn duty it was to prepare the roll, and to examine and ascertain who went on that jury roll, says emphatically that there were negroes on the roll at that time. Now, the defendants have offered some more evidence in support of that proposition. In undertaking to develop the evidence on this motion they have introduced in evidence the jury rolls of Jackson County, and they tell us on the stand by witnesses,—their witnesses,—who examined the records,—they have pointed out several names on that jury roll that they swear were colored men. Ordinarily when a man places a witness on the stand to testify for his cause, he vouches for his truthfulness, and ordinarily he is not permitted to impeach his own witness. The defendants contend further, in support of their proposition, that there is some suspicion of fraud,—that if the legal effect of it,—in the manner of placing the names, or of named negro jurors on the jury roll, their first contention being, and that I believe is in each instance, the name is

found on the last line immediately above the two red lines drawn across the page, and that would be persuasive if each name on the jury roll so appearing was shown to have been a negro, but the record fails to show that, but on the contrary it shows about as many white men put in that blank space as there are negroes, and that leaves that phase of it somewhat uncertain. Then one of the chief contentions, and it is an important one, in undertaking to establish fraud or an illegal act of somebody the evidence centers around the two red lines that are drawn across the pages of the jury roll, consisting of two very large volumes. As a basis for that contention, the defendants placed on the stand a witness that testified that he assumed office in February or March of 1931. Now, I find in reading the testimony of somebody by that same name, that was offered on the last hearing, that witness said 32 names. I take it for granted that was a typographical error. That witness says this, at the beginning, that the old board turned over to the new board, of which he was a member, these jury roll books, but that before they did anything the clerk placed the red lines on the jury roll. This same witness, however, later on in his testimony, stated that he did not see any of the red lines placed on the jury roll, so that leaves that question in a state of uncertainty. But proceeding on that theory, a while. The defendants claim by their evidence that they have proved that the names, at least the names that are under controversy, in each instance, above the red lines, were in certain instances,—that parts of the letters of their names extend into the red lines, and that so far as the negroes are concerned, that parts of their names are *over* the red lines,—that is, written afterwards, which, standing by itself, if the red lines were put there after the new board came in, would be rather strong evidence that there was something wrong, and that the name was placed there purposely and wrongfully, and until the expert took the stand, I was in grave doubt about that matter. But the expert has made a different conclusion greater in several instances. Right at the

beginning of his testimony he testified that the date line that was below the red lines which, under defendants' contention and on which they must stand on that point, was that that date line was written there after the red lines were drawn, but the expert witness testified that in his judgment the red lines were superimposed on that date line. That of itself is enough to create a grave doubt as to when the red lines were placed there. But following the expert up, that shows that sometimes they would be on top and sometimes underneath the red lines. If that is true, what could be said as to when the red lines were placed there? Can any one, with any degree of certainty state just when the red lines were placed in those books? As I see it, there can be but one conclusion reasonably drawn from it, and that is that they were not all placed there at the same time. An examination of the record shows, I think, anywhere from five to seven hundred red lines in the books. No witness appeared here to testify to putting the lines there, or when they were put there, except the first witness, who stated they were put there when they first took charge of the books. Then, later, he qualified his testimony, from my view point. Then again, there is a date on the red lines, and that is where the whole thing hinges. There is an entry above the red lines that is stated to be in the handwriting of the former clerk, made before the old board went out, dated in March, 1929, showing when the name was put there, that date is on the jury roll, and the expert says that the red lines went over that entry. I don't see how to reconcile any such theory as that. Fraud is a thing that has got to be proven. There must be some evidence sufficient to reasonably satisfy the court that there was fraud. I don't think I would be authorized to presume that somebody had committed a crime, nor would I be authorized to presume that the jury board, being sworn officers had been unfaithful to their duties, and allowed the books to be tampered with. They are required to be safely kept in the office of the probate judge, and that would cast a reflection on the probate judge, an-

other sworn officer whose duty it was to keep them at that time. That answers that part of the defendants' contention, and being answered, as I see it by the evidence, I must conclude that there were, at the time the grand jury was drawn that found this indictment, names of colored persons on the jury roll, and I overrule the motion to quash the indictment.

Mr. Leibowitz on behalf of all the defendants excepted to the court's ruling, and stated: I want to get in my exception, the failure of the court to consider the testimony of Kelly Morgan to the effect that when he wrote last in these volumes, there were no red lines on the volumes. I think your Honor omitted that.

The Court said: I am satisfied with my ruling.

The Court answered: These jury rolls are ordered into the custody of the clerk and safely kept until the further order of the court. They won't be removed without consent of counsel. They are impounded.

This was all on the motion to quash the indictments.

Motion for change of venue was filed by the defendant in court, and after reading same Mr. Knight, Attorney General, stated: "The state denies each and every allegation of the motion" and stated that he was ready to proceed to a hearing on the motion. The defense rests on the denial of the state.

WHEREUPON, the court stated to defense counsel to proceed to read the motion to change the venue, together with supporting affidavits.

Mr. Brodsky: We want an exception to your honor's ruling that counsel read the motion to change the venue and the affidavits, on the ground that the publication of the names therein will further aggravate the feeling and prejudice against the petitioners, and serve no good purpose.

The Court: Your motion is overruled, and you have an exception.

Mr. Brodsky: We ask your honor to instruct the stenographer to make note that the court room is crowded during the period of the reading of the affidavits.

The Court: I decline to do that. This is a public trial, and give you an exception.

THEREUPON, Mr. Brodsky proceeded to read the motion for a change of venue, and supporting affidavits, which were as follows:

IN THE CIRCUIT COURT OF ALABAMA

IN AND FOR MORGAN COUNTY.

No. 1,977.

STATE OF ALABAMA

against

HAYWOOD PATTERSON, OZIE POWELL, WILLIE ROBERSON, OLEN MONTGOMERY, CLARENCE NORRIS, CHARLEY WEEMS, and ANDY WRIGHT.

MOTION FOR CHANGE OF VENUE.

Your petitioners, who are defendants in the above styled cases, come and make application to the court to have their trial and trials now pending in the Circuit Court of Morgan County, Alabama, transferred and removed from the Circuit Court of Morgan County to the Circuit Court of Jefferson County, the same being the

nearest county to Morgan and Jackson Counties where a fair, impartial and unbiased trial of your defendants may reasonably be expected to be had, and your petitioners allege as follows:

1. Your petitioners and each of them are negroes of the African race and citizens of the United States.

2. On or about March 25, 1931, your petitioners were taken off a train at Paint Rock,, Jackson County, Alabama, by a large group of officials and citizens and accused of the crime of allegedly forcefully ravishing two white women on said train.

3. On or about March 31, 1931, your petitioners were indicted by a special grand jury of Jackson County in joint and separate indictments, for allegedly ravishing one Victoria Price, one of the aforesaid two women on aforesaid train.

4. Subsequently and six days later and during the days of April 6, 7, and 8, 1931, your petitioners were tried on said indictments in the Circuit Court of Jackson County, located at Scottsboro, before Honorable Judge Hawkins in four separate trials, and all were found guilty and sentenced to death except the defendant Roy Wright, as to whom there was a disagreement by the jury.

5. Thereafter motions were made for a new trial of these defendants that were convicted, which motions were denied. Thereafter appeals were taken from the aforesaid judgments of conviction and sentences of death and the denial of the motions for a new trial to the Supreme Court of the State of Alabama. The said Supreme Court affirmed all of said convictions except the conviction of Eugene Williams who was held to be a juvenile. Chief Judge Anderson of the said Supreme Court dissented said affirmances in a written opinion.

6. Thereafter your defendants, except Eugene Williams and Roy Wright, moved in the Supreme Court of the United States for writs of certiorari to review their conviction, which writs were granted, and upon said review, the Supreme Court of the United States reversed the judgments of conviction because of the denial to your petitioners of due process of law under the constitution of the United States and the amendments thereto, and remanded the cases for further proceedings as more fully appears from the opinion of the United States Supreme Court.

7. Thereafter in March, 1933, Honorable A. E. Hawkins, Judge of the Circuit Court of Jackson County set the said causes of your defendants for retrial in said county. Whereupon your petitioners moved on March 6, 1933, before said judge for a change of venue from the Circuit Court of Jackson County to the Circuit Court of Jefferson County, on the grounds that petitioners could not and would not secure a fair trial in Jackson County or any of the surrounding counties, the said Jefferson County being the nearest county where defendants might procure a fair trial. The court denied petitioners' application for a change of venue to Jefferson County, but granted a change of venue to Morgan County, to which denial the defendants duly excepted. Your defendants now renew their exception to the aforesaid denial. Your petitioners herewith make the aforesaid motion and the exhibits thereto attached a part of the within motion as if fully set forth herein again at length.

8. Thereafter the trials of your defendants were set for March 27, 1933 in the Circuit Court of Morgan County before Honorable James E. Horton, Judge of said Court. Proceedings commenced on said day with a motion of defendants to quash the indictments and indictments found against them, because of the arbitrary and unlawful exclusion of negroes from the grand jury, but after hearings thereon, said motion was denied. Thereupon Honorable Thomas E. Knight, Attorney General of the State

of Alabama moved for a severance of the trial of Haywood Patterson, which motion, over objection of the defendants, was granted by the court. Thereupon the trial of said Haywood Patterson was set for and opened on March 30, 1933, with a motion by said defendants to quash the venire of petit jurors in his case on the ground of arbitrary and unlawful exclusion of negroes from said venire, and after hearings had thereon said motion was denied by the court. The actual trial of said Haywood Patterson thereupon commenced on April 3, 1933, and ended on April 9, 1933, when the jury brought in a verdict of guilty and imposed the sentence of death. Judge Horton set the date for execution at July 10, 1933.

9. Thereafter Honorable Thomas E. Knight, Attorney General for the State of Alabama, asked the court that Charley Weems be the next defendant to be tried. Judge Horton thereupon set the date of trial of said Charley Weems at April 17th, 1933 over objection of the defendant.

10. Thereafter on April 17th, 1933, the date set for the trial of Weems, Judge Horton of his own motion adjourned the said trial sine die on the ground, as stated by Judge Horton, that said defendant could not procure a fair trial at that time, as is herein more fully set forth and as appears from the statements of Judge Horton in the record of the State of Alabama against Charley Weems, a copy of which is hereto annexed, and marked Exhibit "A".

11. Thereafter the defendant Haywood Patterson made and filed a motion before Honorable Judge Horton to set aside the judgment and conviction and sentence of death and to grant him a new trial. Judge Horton granted this motion in a written opinion in the record of the State of Alabama against Haywood Patterson, heretofore filed with the clerk of the said Circuit Court. The said motion and amended motion for a new trial, with the affidavits thereto attached and the opinion of

the court, are made a part of this motion as if fully set forth herein at length.

12. The cases of all your defendants are now coming on to be held in the Circuit Court of Morgan County before Honorable Judge W. W. Callahan who has fixed the date of arraignment at November 20, 1933 and the date of trials for November 27, 1933.

13. Your defendants allege and state that ever since the arrest of your defendants in March, 1931, through their first trial and the second trial of Haywood Patterson and up to the present time, their cases have stirred and continue to stir the deepest and profoundest hatred, prejudice and bitterness against them and their attorneys. This hatred and prejudice exist not only by reason of the character of the charge,—the heinous crime of rape by nine negroes of two white women,—but also because of the determined fight by the defendants and their counsel on the question of the exclusion of negroes from Grand and Petit Juries, and further the nation—and world-wide interest and sympathy in the cases of your defendants which many of the citizens of Alabama interpret as an unwanted and uncalled for interference with their own affairs.

14. Your petitioners will not here again repeat the circumstances of hate, prejudice, coercion and animosity surrounding the first trials of your defendants in Scottsboro, but will respectfully refer the Court to the ample statement of the same appearing in the records of the United States Supreme Court in the cases of Haywood Patterson, et al., versus State of Alabama and further to the motion for a change of venue and the affidavits attached thereto heretofore made and filed before Honorable Judge Hawkins in Jackson County on March 6, 1933. The statements and allegations therein made were fully confirmed by the action of Judge Hawkins in changing the venue of the trial of your defendant from Jackson County to Morgan County as aforesaid.

15. Your petitioners allege and state that they can not and will not obtain a fair and impartial trial or trials in Morgan County and that their lives, the lives of their counsel and of witnesses for the defendants will be and are in grave danger if the trials of your defendants are held in Morgan County, for the reasons hereinafter set forth.

16. That all the proceedings against petitioners heretofore had in Morgan County, including the hearings on the motions to quash the Grand Jury and the venire of the Petit Jury, the trial of Haywood Patterson and the motions and hearings had subsequent thereto were surrounded and enveloped in an atmosphere of extreme hatred, prejudice, coercion and animosity, and occasioned by acts of threatened violence by the white citizens of Morgan County against the defendants and their counsel.

17. That by reason of the aforesaid, which was apparent from the very commencement of the trials in Morgan County, and even before, the sheriff of Morgan County petitioned the Governor of the State of Alabama for the attendance at the trials and in and about the jail where the defendants were confined of a contingent of the National Guard to supplement the local police forces.

18. That throughout the aforesaid hearings and trials, a detachment of the National Guard under Captain Joseph Burleson, from its headquarters in Hartselle, Morgan County, Alabama, equipped with machine guns, rifles, tear gas bombs, riot guns and other armaments of warfare attended by direction of the Governor of the State of Alabama.

19. That during the course of the trial of Haywood Patterson aforesaid, a group of over 200 citizens of Decatur congregated at a meeting of the Ku Klux Klan in the very City of Decatur where said defendant was on trial, for the purpose of planning an attack upon the

defendants and attorneys for the defense. This failed of being carried out solely through the vigilance of officers of the law and the plea of Sheriff Davis, who presented himself at the meeting.

20. On similar occasions during the course of the aforesaid proceedings in Morgan County, citizens of the County and the surrounding countryside were stirred and aroused to active hostility against the defendants and their attorneys by the burning of fiery crosses at night in the usual manner of signals of meetings of the Ku Klux Klan.

21. That violence against the defendants and their attorneys was actually attempted to be carried out during aforesaid proceedings in Morgan County by a series of marches by organized mobs from the nearby towns of Scottsboro and Huntsville, Alabama. These nefarious attempts were halted on each occasion solely by the timely interference of the State militia, the sheriff and his posse.

22. That so real, palpable and all-pervading was the atmosphere of hostility and animus against the defendants and their counsel during the aforesaid proceeding, that on at least two occasions during the trial Judge Horton deemed it necessary to deliver long addresses to the audience and through them to all of the citizens of the county and adjoining counties, pleading with them to avoid violence and to keep peace and warning them that should they take any hostile action against the defendants and their counsel, it would be met with the armed resistance of the officers of the law.

23. That in spite of the repeated warnings of the court and the attendance of the military, the lives and safety of the defendants and their counsel were openly and continuously threatened and seriously endangered throughout the aforesaid proceedings in Morgan County.

42. That in the early part of the proceedings in Morgan County, aforesaid, a pamphlet was widely and openly circulated and sold in and about the Court House, the Town of Decatur, and the surrounding counties. This pamphlet was entitled "The Unpublished Inside Story of the Infamous Scottsboro Case", by J. Glenn Jordan, allegedly "containing all the sensational evidence introduced at the trial", and was full of misrepresentations, falsehoods, incitations and incendiary statements against the defendant and all those connected with the defense. That on the very first page in this pamphlet appeared a photograph of Victoria Price and Ruby Bates, over which was a glaring headline "VICTIMS OF NEGRO RAPISTS." On the last page of said pamphlet was a "Publisher's Note" in which was stated the following:

> "This little book is being offered to the reading public as an answer to the malicious and libelous propaganda of certain Communistic organizations which are attempting to capitalize on the conviction of the seven negro *fiends* who were *unquestionably guilty* of the crime with which they were charged." (Italics our.)

Quoting from one of the concluding paragraphs of the said pamphlet is the following:

> "• • • *then Alabama and the world will finally see justice claim its own—will see the negroes receive their just deserts—death in the electric chair.*" (Italics ours.)

That the sale of these pamphlets aroused and heightened the animosity of the citizens and the prospective jurors who were to try these capital cases against the defendants, tended to convince them before the trial of the guilt of the defendants, and made it impossible for the defendants to procure a fair and impartial trial. That

although, upon learning of the sale of these pamphlets, the court did reprimand persons who sold the same and cautioned them against its further distribution, the prejudice engendered by the dissemination of the said publication or booklet was such that no admonition on the part of the Court could remove the same in the slightest degree. Upon information and belief that said pamphlet still circulates in Morgan County and has been read by many citizens of said county who will be the prospective jurors in the forthcoming trials of your defendants.

25. That during the course of the aforesaid trial in Morgan County the Negro citizens of Decatur and the surrounding country were in terror of their lives for the reason that they knew that should the defendants be acquitted, there would be a wholesale attack upon the Negroes in the County. For that reason, the Negro churches and homes were kept in darkness after nightfall. That the two hardware stores in the town of Decatur were completely emptied and sold out of arms and ammunition purchased by white citizens who were preparing for armed attacks.

26. During the selection and impanelment of the trial jurors in the aforesaid trial of Haywood Patterson, while counsel for the defendant was properly and lawfully interrogating the veniremen, one Morgan, a member of the said venire, walked through the court room in the enclosure where the Judge, counsel and others properly there were seated, and in a loud and boisterous manner complained to the Court that counsel for the defendant had no right "to instruct the jury as to the law" and that "we in Morgan County have been in the habit of receiving our law from the Court" all this delivered in such a manner as to prejudice and incite many of the other veniremen seated in the court room absolutely within the hearing of this utterance made by the said Morgan.

27. That during the striking of the aforesaid jury, the Sheriff of the County, Mr. Davis, sat beside Wade Wright, solicitor of Morgan County, and counsel for the prosecution, and apparently took active part in advising, counselling and aiding the prosecution in the selection of the trial jurors who were to hear the evidence in this case, all done in the presence of the veniremen seated in the body of the court room. That this insidious association of law officer of the State with the attorneys for the prosecution was highly improper and tended to convey to the jurymen and citizens and onlookers that the Sheriff of the County was endorsing the prosecution as against the defense. That the effect of the conduct of the Sheriff as stated became more insidious by reason of the fact that most of the members of the said venire and of the prospective jurors in the coming trials of your defendants were and are personally known to him and many of the same were close and intimate friends of the said Sheriff.

28. The conduct of the attorneys for the prosecution during the aforesaid trial in Morgan County was calculated to and did inflame and incite the minds of the jury selected to try this case to base their verdict upon race prejudice and sectionalism as will appear from the incidents hereinafter referred to.

a) The Attorney General of the State of Alabama, Thomas E. Knight, Jr., Chief of the attorneys for the prosecution, stated in open court that he refused to address a Negro witness as "mister," explaning that "he is not in the habit of doing that."

b) That the conduct of the Attorney General towards the witnesses for the defense, expecially those who were Negroes, was uniformly contumacious, sneering and insulting and calculated to arouse the basest prejudice in the minds and hearts of the jurymen towards the said witnesses and towards the defense for whom they testified.

c) That during the course of the trial, while one J. Arthur Woodall, as witness for the prosecution was on the witness stand, testimony was elicited from the said Woodall that he found an knife and fifty cents in currency on the person of one of the co-defendants and that the said co-defendant admitted that he had taken the same from Victoria Price, one of the witnesses for the prosecution. The Attorney General, who was seated at the prosecution table at the time this incident occurred, jumped from his seat, clapping his hands in applause of the witness's testimony and leaped in glee from the table, a distance of approximately fifteen or twenty feet through a door that led into the witness chamber adjoining the court room. A motion for a mistrial was made on behalf of the defendant, which was denied by the Court and exception was duly taken.

The Attorney General returned to the court room and apologized to the Court, to the jury and to counsel. However, the prejudice and animus created by such unseemly conduct on the part of the chief prosecuting officer of the State of Alabama was such that no apology on his part could serve to rectify the harm already done.

d) That during the entire course of the proceedings and trial, as will more fully and definitely appear from the minutes taken by the court reporter, the conduct of the prosecution was so calculated to and did inflame and incite passions of race hatred and sectionalism and prejudice in the minds and hearts of the jury and the citizens of Morgan County.

e) That upon the arguments made to the jury in summation by the Solicitor H. G. Bailey, he continuously referred to the clothing of one of the witnesses for the defense as having been purchased in New York and made other suggestions and insinuations concerning the State of New York and its residents, all with a purpose of inflaming the minds of the jury and the citizens of Morgan County towards any person connected with the case who

lived in New York, knowing full well that it was common knowledge that both Mr. Leibowitz and Mr. Brodsky of defense counsel were residents of the State of New York.

f) That the said Solicitor H. G. Bailey also stated the following in his argument to the jury:

> "If you let this man (pointing to Patterson) go free, every white father in the State of Alabama will tremble in his bed for the safety of his daughter,"

thus appealing to the lowest prejudice and superstitions of the jury and the citizens of Morgan County.

g) That there then followed the argument of Mr. Wade Wright Solicitor for Morgan County and one of the staff of the prosecution, who in a tone reverberating through every nook and cranny of the court room shouted:

> "Show them that Alabama justice cannot be bought and sold with Jew money from New York."

Further in his argument, he shouted, shaking his hands in alleged imitation and burlesques of the Jewish manner of gesticulating speech:

> "That man Carter—Carterinsky as he is now—is a new kind of man to me. Did you watch his hands? If he had been with Brodsky another two weeks he would have been down here with a pack on his back trying to sell you goods. Are you going to countenance that sort of thing?"

So stirred was the audience in the court room that from among them one of them was heard to shout, "No!"; all this is in the presence of and audible to the jury and audience. Frequently during his speech, "Amens" and murmurs of approval or anger, as the occasion demanded could be heard in the court room.

h) Attorney General Thomas E. Knight, Jr., in his argument to the jury referred to the defendant as "that thing." He stated that he did not deem it necessary to "call a Negro to corroborate a white witness." He made repeated emphasis upon the fact that a witness for the defense, one Dr. Reisman, came from Chattanooga Tennessee, and "were they (the jury) going to believe a Chattanooga doctor as against a doctor that came from their home town (Decatur)" thus appealing again to every unholy and base passion that could possibly emanate from the mind or heart of man.

29. The aforesaid allegations of hatred and prejudice attending the entire proceedings in Morgan County and the impossibility for the defendants to procure a fair trial in Morgan County were fully confirmed by the action of Judge Horton on April 17, 1933, in continuing the case of Charlie Weems, the next defendant to be tried, "until such time when in its judgment a fair and impartial trial may be had." Honorable James E. Horton, Judge of the Court in announcing the continuance, made a lengthy statement setting forth the reasons therefor. In his opening remarks, Judge Horton stated:

> "The nature of these cases, being a case where a negro is accused of the rape of a white woman, is such as would naturally excite resentment, and it is always difficult, even under the most favorable circumstances to obtain a fair and impartial verdict."

Further on in his statement, Judge Horton said:

> "On account of certain influences, many of which to this court appear sinister, and are actuated by a desire to stir up and foment strife between the races in the South it has been difficult to try what are known as the Scottsboro cases upon the real facts. I am not now passing judgment upon the verdict in the case already tried. *I know the Court*

had great difficulty in preventing extraneous influences having some effect on the jury." (Our emphasis.)

Judge Horton, following the above statement by giving his opinion that "these influences (were) still existing" and "the public mind still disturbed." Judge Horton then referred to an article which appeared on the front page of the "Decatur Daily" an newspaper published in the town of Decatur, on April 15, 1933 which contained an alleged statement of Attorney General Thomas E. Knight and the report of an alleged statement of Mr. Samuel S. Leibowitz, one of counsel for the defendants, and stated that said article

> "has contributed to the *already heated atmosphere which surrounded this case.* No Court regardful of its duty to see that trials must be fair and impartial could under such baneful influence permit the trial of this case to proceed at the present time. It, therefore, becomes the unquestioned duty of this court at the present time to enter of its own motion a continuance of this case until such a time when in its judgment a fair and impartial trial may be had. Therefore the case of the State of Alabama vs. Charles Weems is continued and the Court so orders." (Our emphasis.)

The full statement of Judge Horton appears in the record of State of Alabama against Charles Weems and an exact copy thereof is attached hereto, made part hereof, and marked Exhibit "A." As if to emphasize the necessity of the Court's action and to give dramatic confirmation to the Court's concern, even while the Court was announcing the continuance and while the defendant and counsel for the defense were in Court, an fiery cross was burned upon the tracks of the Southern Railroad at or near the railroad station in the town of Decatur flaming in the full light of day.

30. The aforesaid allegations contained in paragraphs 16 to 29 both inclusive, are more fully set forth and confirmed in the motion for a new trial heretofore made and filed in the case of the state of Alabama against Haywood Patterson, and the affidavits attached thereto, all of which are made a part of this motion as if fully set forth herein at length.

31. That the state of high feeling, passion, prejudice and hatred against the defendants and their counsel existing in Morgan County as set forth above, not only continue to exist and prevail in Morgan County, but more have reached new heights and greater intensity than ever before; and your defendants aver that it is absolutely unthinkable that they or any of them can procure a fair and impartial trial by any jury composed of citizens of Morgan County or that their lives and the lives of their counsel are not very seriously endangered.

32. In full confirmation of the statements made in the foregoing paragraphs, your petitioners submit herewith the affidavits of Victor Ellwood, sworn to the 8th day of August, 1933, marked Exhibit "B", sworn to the 29th day of August, 1933, marked Exhibit "C", sworn to the 2nd day of September, 1933, marked Exhibit "D" and sworn to the 28th day of October, 1933, marked Exhibit "E"; the affidavits of John Williams, sworn to the 2nd day of September, 1933, marked Exhibit "F", and the 14th day of November, 1933, marked Exhibit "G"; and the affidavits of Jim Jones, sworn to the 28th day of August, 1933, marked Exhibit "H", and sworn to the 27th day of October, 1933, marked Exhibit "I"; the affidavit of David Schriftman, a New York Attorney, sworn to the 14th day of November, 1933, marked Exhibit "J"; and the affidavit of George W. Chamlee, one of the attorneys for the defendants, sworn to the 7th day of November, 1933, marked Exhibit "K"; all of which affidavits are attached to the within motion and made part hereof as if fully set forth therein at length.

33. Your petitioners will not here again set forth at length the allegations and statements made in the affidavits referred to in the previous paragraph, and annexed to this motion, but will merely summarize their contents for the Court:

A). The above affiants were in Morgan County between June 15, 1933 and November 1, 1933.

B) During that time they visited many of the towns of Morgan County, including Decatur, Hartselle, Falkville, and Danville. They spoke with over a thousand white and over three hundred Negro inhabitants of said County, of whom about five hundred and twenty-five are specifically named in the affidavits concerning the "Scottsboro Case."

C) That a summary of the opinions expressed by the white persons spoken to is:

a) That the "niggers" and their "dirty Jew lawyers from New York" should be lynched or burned.

b) That too much time and money was already spent on the case, and "30¢ of rope" would put an end to it soon enough.

c) That the "niggers" were unquestionably guilty.

d) That even if they were not guilty they should burn anyway as a lesson to the rest of the "niggers" to keep them in their proper place, and "to stop raping our white women."

e) That the "niggers" and their "dirty Jew lawyers", and even General Chamlee, would never get out of Decatur alive, especially if those "niggers" were let go.

f) That no jury in Morgan County, or for that matter in the State of Alabama, would ever find or dare to find defendants not guilty.

g) That many would get on the jury merely to have a chance to "burn the niggers" and would be willing to state that they had no fixed opinion as to the guilt of the defendants in order to get on the jury.

h) That Ruby Bates and Lester Carter, two witnesses who testified for the defense at the last trial of Haywood Patterson ought to be burned or lynched.

i) That Judge Horton "sold out" to the "niggers".

j) That no "niggers" could ever get on the jury in Morgan County or anywhere in the State.

l) That several of the persons interviewed or mentioned were in the Patterson jury or venire.

m) That the "niggers" and their lawyers ought to get the same treatment that Royal got. (Royal was a young Negro who was lynched recently in the town of Decatur as will be set forth more fully hereinafter.)

D) That a summary of the opinions of the Negro persons spoken with is this:

a) That the case was a "frame-up" and that the Negro defendants did not have a chance.

b) That Patterson did not get a fair trial.

c) That none of the defendants could get a fair trial in Morgan County or any of the northern counties, but some thought they might have a chance in Birmingham.

d) That ever since the "Scottsboro case" came to Decatur, the negroes of that town and the surrounding country have been fearful of their lives, many have lost their jobs and all are terrified or terrorized.

e) That no Morgan County jury would ever release the defendants.

f) The white people of Morgan County would never let Negroes get on the jury.

g) That if the defendants and their attorneys came to Decatur there is little chance that they would get out alive.

34. That the matter and opinions set forth in the affidavits hereinabove referred to received eloquent confirmation in two editorials which appeared in the front pages of the "Community Builder" of November 3, 1933, and October 27, 1933, a newspaper published in the City of Huntsville, Madison County, Alabama (adjoining Morgan and Jackson counties), both of which editorials are attached hereto and marked Exhibits "L" and "M" respectively and made part hereof.

An excerpt from the said editorial of November 3, 1933 follows:

> "*And in the face of the feeling that exists at Decatur as well as throughout the Tennessee Valley,* against any lawyer claiming to represent the International Labor Defense League, we suggest that it would not be well for these lawyers to again show up on any soil at any point in this valley. We do not need that type of *cattle* down here, and their further appearance is wholly unnecessary." (Italics ours.)

An excerpt from the said editorial of October 27, 1933 follows:

"This newspaper feels that in fairness to the citizens of the Tennessee Valley as a whole, the negroes to be retried and especially lawyers hailing from the eastern states that these particular lawyers remain at home and not make their further appearance at Decatur, to defend negroes involved in the Scottsboro case or otherwise. Fact of the business is we do not believe one man by the name of Samuel S. Leibowitz has little enough sense to again make his appearance within the borders of the Tennessee Valley."

The sentiments and dark warnings expressed in these editorials confirm to the fullest extent the allegations of your petitioners that they cannot procure a fair trial, and that their lives and the lives of their attorneys are and will be seriously endangered in Morgan County, "as well as throughout the Tennessee Valley," by which your defendants verily believe is intended all the northern counties of the State of Alabama, as can readily be seen by reference to a map of the State of Alabama.

35. That on August 21, 1933, a young Negro, James Royal, was brutally lynched by a mob in the very City of Decatur, where the defendants are again about to face trial. Royal was not even charged with the commission of any crime, but the mob, disappointed in its efforts to seize and lynch another Negro, Thomas Brown, after vainly breaking into the Decatur jail, vent its anger on the innocent Royal, the first Negro who crossed their path.

36. That the newspapers published and circulated in Morgan County have contributed and added to the bad feeling and deep hatred existing against the defendants and their counsel, as was confirmed by Judge Horton's action, above referred to, in granting continuance of the trial of Charley Weems, basing same in great part upon an article appearing in a "Decatur Daily" of April 15, 1933.

37. That the newspapers published in Jackson County, more particularly the "Jackson County Sentinel", published articles hostile and damaging to the defendants, and on information and belief, said newspapers circulated and were widely read throughout Morgan County and spread the hostility against your defendants to Morgan County. (See articles appearing in "Jackson County Sentinel" of March 26, 1931; April 2, 1931 and April 3, 1931, in record in United States Supreme Court in *Powell* v. *Alabama*, pages 5 to 16, both inclusive, and referred to in motion for a change of venue heretofore made before Judge Hawkins in the Circuit Court of Jackson County on March 6, 1933, and hereinabove referred to.)

38. That the jail located in the City of Decatur where your defendants were confined during the previous trial in Morgan County where they will again be confined in the forthcoming trial, is an ancient and abandoned building, thoroughly unfit for the purpose of keeping your defendants safe from attacks by groups of persons who may seek to do so. In a recent press dispatch the said jail was described as one "which could be broken into with a teaspoon." That such is the case is proven by the fact that the defendants were at all times confined in the jail in Birmingham except during the actual trial in Decatur, when the jail was protected by a large contingent of National Guardsmen, and that immediately upon completion of the trial the defendants were sent back to the Birmingham jail for safety.

39. Your petitioners allege that, in addition to Jackson and Morgan Counties, they cannot and will not procure a fair and impartial trial and trials, and their lives and the lives of their attorneys and of witnesses on behalf of the defense will not be safe at a trial in any of the northern counties of the State of Alabama, to wit, Lauderdale, Limestone, Madison, Colbert, Franklin, Lawrence, Marshall, DeKalb, Marion, Winston, Cullman, Blount Etowah, Cherokee, Lamar, Fayette, Walker, St.

Clair, Calhoun, Cleburne, Pickens, Tuscaloos, Shelby, Talladega, Clay and Randolph Counties.

40. Your petitioners submit that the Court has already ruled that a fair and impartial trial of the defendants cannot be had in at least any of the following counties: Madison, Limestone, Marshall, Dekalb, Cherokee and Etowah counties. Your petitioners conclude this from the fact that Judge A. E. Hawkins heretofore transferred the venue of their trials from Jackson County to Morgan County as the nearest county to Jackson County where the defendants may procure a fair and impartial trial, as hereinabove set forth. That the said six counties are nearer to Jackson County or not any further from Jackson County, than is Morgan County. That the cogent reasons that caused Judge Hawkins to eliminate the aforesaid six counties not only exist and continue to exist up to the present time, but, more, are enhanced and made more compelling by the situation as it has developed since that time, is hereinbefore and hereinafter set forth.

41. Upon information and belief, particularly strong prejudice against Negroes exists in all of the northern counties hereinbefore enumerated in paragraph 39.

42. Upon information and belief, that the newspapers published in Jackson County, and more specifically the "Jackson County Sentinel" which has published articles hostile and damaging to the defendants as is hereinbefore more fully set forth in paragraph 37, circulates throughout the county and widely read by residents of all the northern counties hereinabove enumerated in Paragraph 39 and more especially, Limestone, Madison, Morgan, Cullman, Marshall, Blount, Etowah, Cherokee, St. Clair, Calhoun and Cleburn counties.

43. Upon information and belief, that the newspapers published in Madison County, and more specifically, the "Huntsville News" which has published articles hostile

and damaging to the defendants as is hereinbefore more fully set forth; and the "Community Builder" whose articles are hereinabove referred to in Paragraph 34, circulate throughout and are widely read by residents of all the northern counties of the State of Alabama enumerated in Paragraph 39.

44. Upon information and belief, that the newspapers published in Morgan County, and more specifically the "Decatur Daily" which has published articles hostile and damaging to the defendants particularly the article appearing in its issue of April 15, 1933 which Judge Horton considered so serious as to be the ground for his granting a continuance in the case of Charley Weems, as hereinbefore set forth in Paragraph 29; circulate throughout and are widely read by residents of all the northern counties of Alabama enumerated above in Paragraph 39.

45. Upon information and belief, that a pamphlet entitled "The Unpublished Inside Story of the Infamous Scottsboro Case" by one J. Glenn Jordan, full of misrepresentations, falsehoods, incitations and incendiary statements against the defendants and all those connected with the defense, as is more fully set forth hereinabove in Paragraph 24, was and still is being widely circulated and profitably sold and their contents more widely circulated by word of mouth, throughout the northern counties of the State of Alabama enumerated in Paragraph 39. That said pamphlet was calculated to and did and does arouse and heighten the animosity of the residents of the aforesaid northern counties and tended and tends to convince them in advance of the trials of the guilt of the defendants, and for that reason, it will be difficult, if not impossible, for the defendants to procure a fair trial in any of said northern counties.

46. Upon information and belief, that the aforesaid articles and others of similar vein appearing in afore-

said newspapers and aforesaid pamphlet set forth in Paragraphs 42, 43, 44 and 45 were calculated to and did and do arouse hostility and prejudice against your petitioners in the northern counties of the State of Alabama above enumerated in Paragraph 39.

47. Upon information and belief that citizens from all of the northern counties of Alabama enumerated above in Paragraph 39 and especially from the counties adjoining Jackson and Morgan counties, attended the various trials and hearings of your petitioners at Scottsboro, Jackson County, and Decatur, Morgan County. These persons were infected with the epidemic virus of hostility and animosity against the defendants and the widely expressed belief in the guilt of the petitioners that prevailed at the trials and in the said two counties, and brought the same back with them to their home county and spread the same there still further by word of mouth and otherwise. That many of the aforesaid persons would be prospective jurors if the trials were transferred to any of their respective counties.

48. Upon information and belief, there are no jails in any of most of the aforesaid northern counties enumerated in Paragraph 39 where your defendants can be safely confined during their trials. That even the jail in the City of Decatur which is one of the larger county seats in the northern counties, was not regarded as safe by the authorities and your petitioners were confined in the Birmingham Jail at all times except at the previous trial of Haywood Patterson when the jail was guarded by a contingent of the National Guard.

49. That the respective county seats of the northern counties are located in rural communities with a small population and having small police forces, and where the attendance of the military at their trials would be absolutely essential to safeguard the lives of your petitioners, their attorneys and witnesses for the defense.

50. That the populations of the respective county seats of the aforesaid northern counties above enumerated in Paragraph 39, and of Jackson and Morgan Counties, according to the United States Census of 1930 are as follows:

County and County Seat	*Population of County Seat*
Lauderdale—Florence	11,729
Limestone—Athens	4,238
Madison—Huntsville	11,554
Jackson—Scottsboro	2,304
Colbert—Tuscumbia	4,533
Franklin—Russellville	3,146
Lawrence—Moulton	639
Morgan—Decatur	15,593
Marshall—Guntersville	2,826
DeKalb—Fort Payne	3,375
Marion—Hamilton	695
Winston—Double Springs	306
Cullman—Cullman	2,786
Blount—Oneonta	1,387
Etowah—Gadsden	24,042
Cherokee—Denter	288
Lamar—Vernon	519
Fayette—Fayette	2,109
Walker—Jasper	5,313
St. Clair—Pell City	835
Calhoun—Anniston	22,345
Cleburn—Heflin	1,231
Pickens—Carrolton	569
Tuscaloosa—Tuscaloosa	20,659
Shelby—Montevallo	1,245
Talladega—Talladega	7,596
Clay—Ashland	1,476
Randolph—Wedowee	396

51. Upon information and belief that several of the National Guard under the command of Major Starnes, who attended the former trials at Scottsboro came from

Guntersville in Marshall County (Record in the United States Supreme Court in Powell, et al., v. Alabama, p. 12).

52. Upon information and belief, that the aforesaid carried back with them to Marshal County the prejudiced atmosphere that surrounded the former trial of your petitioners in Jackson County.

53. Upon information and belief that several of the National Guard under the command of Major Starnes, who attended the former trials at Scottsboro came from Gadsden in Etowah County (Record in the United States Supreme Court in *Powell, et al.*, v. *Alabama*, p. 12).

54. Upon information and belief, that the aforesaid carried back with them to Etowah County the prejudiced atmosphere that surrounded the trials of your defendants in Jackson County.

55. That after the arrest of your petitioners in March, of 1931, they were taken to the jail in Gadsden in Etowah County and were confined there until and during their trials in Scottsboro. That during their said trials your petitioners were several times transported to and from said jail and the Court. That such view of your petitioners under military guard increased the prejudice against them; as was stated by Chief Judge Anderson of the Supreme Court of Alabama in his dissenting opinion in *Powell* v. *Alabama*, 224 Ala. 540; 141 So. 201, 214:

> "Every step that was taken from the arrest and arraignment to the sentence, was accompanied by the military. Soldiers removed the defendants to Gadsden for safe-keeping, soldiers escorted them back to Scottsboro for arraignment, soldiers escorted them back to Gadsden for safekeeping while awaiting trial, soldiers returned them to Scottsboro for trial, a few days thereafter, and soldiers guarded

the court house and grounds during every step in the trial, and after trial and sentence, again removed them to Gadsden. Whether this was essention to protect the prisoners from violence, or because the officials were over apprehensive as to the condition of the public mind matters little, as this fact along was enough to have a coercive influence on the jury."

56. Upon information and belief, that after the conviction of your petitioners in Jackson County, the Sheriff of Etowah County requested the removal of your petitioners from the Gadsden jail on the ground that same was unsafe.

57. That Victoria Price, the prosecutrix and alleged victim of the alleged attack by your petitioners, resides in Madison County in the City of Huntsville (Record in the United States Supreme Court in *Powell* v. *Alabama*, at p. 22).

58. Upon information and belief that because of the residence of the said Victoria Price in Madison County, your petitioners cannot have a fair and impartial trial in said County or be safe from attack by the aroused populace of said county.

59. That Ruby Bates, formerly a co-complainant with Victoria Price, but at the last trial of Haywood Patterson a witness on behalf of the defense, resides or did formerly reside in Madison County in the City of Huntsville (Record in the United States Supreme Court in *Powell* v. *Alabama*, at p. 26).

60. Upon information and belief, because of the residence or former residence of said Ruby Bates in said Madison County, and also because said Ruby Bates had contradicted and discredited the story of Victoria Price, there is extreme bitterness prevalent in said County against her, and your petitioners could not have a fair

and impartial trial in said county or they and witnesses on their behalf be same from attacks by the aroused populace of said county.

61. That during the trial of Haywood Patterson in Decatur, groups of organized mobs from Madison County attempted to march upon Decatur to attack the defendants and their counsel and fiery crosses were burned, as is more particularly set forth in Paragraphs 19, 20, 21 and 22.

62. Upon information and belief, that the following counties of the northern counties enumerated in Paragraph 39 and their respective county seats are as far removed or further removed from Decatur, Morgan County than is the City of Birmingham, Jefferson County: DeKalb, Marion, Lamar, Pickens, Tuscaloosa, Shelby, St. Clair, Talladega, Clay, Randolph, Cleburne, Calhoune and Cherokee counties.

63. Upon information and belief that the following counties of the northern counties enumerated in Paragraph 39 and their respective county seats are as far removed or further removed from Scottsboro, Jackson County, than is Birmingham, Jefferson County: Pickens, Tuscaloosa, Lamar, Fayette, Walker, Marion, Winston, Franklin, Colbert, Lauderdale, Shelby, Talladega, Clay, Cleburne and Randolph counties.

64. Upon information and belief, that the county seats of the following northern counties enumerated above in Paragraph 39 can be reached by train from Morgan and Jackson Counties, Alabama and Chattanooga, Tennessee, only via Birmingham: Tuscaloosa, Pickens, Lamar, Fayette, Winston, Walker and Shelby counties.

65. Upon information and belief, that the following county seats of the respective northern counties enumerated above in Paragraph 39 have no railroad connecting with them:

County	*County Seat*
Lamar	Vernon
Marion	Hamilton
Randolph	Wedowee
Cherokee	Center
Lawrence	Moulton
Winston	Double Springs

66. Upon information and belief, the attorneys for the petitioners and witnesses on behalf of the defense cannot be adequately or safely quartered at any of the foregoing northern counties enumerated in paragraph 39.

67. That on or about August 14, 1933, two young Negroes, Dan Pippin, Jr. and A T Harden, were lynched and a third, Elmore Clark, left for dead, by a mob of citizens in Tuscaloosa county who intercepted the Sheriff and his deputies who were taking the said negroes to the Birmingham jail for safety.

68. That several weeks later and on or about September 24, 1933 another negro, Denis Cross, a paralytic, was lynched by a mob at Tuscaloosa, Tuscaloosa County.

69. Upon information and belief that Jefferson County is the nearest county to Morgan and Jackson Counties where your petitioners may procure a fair and impartial trial, and where their lives and the lives of their counsel and witnesses on behalf of the defense may be safeguarded, for the reasons above set forth and affirmatively for the following reasons:

a) The county seat of Jefferson County is the City of Birmingham, with a population of 259,678, according to the United States Census of 1930.

b) That said City of Birmingham is the largest city in the State of Alabama and one of the largest in the South.

c) Upon information and belief, that the deep-seated prejudice and hatred against persons of the Negro race that prevails in the northern counties of the State of Alabama does not exist to the same extent among the large metropolitan and urban population of the City of Birmingham.

d) Upon information and belief, that the prejudice, hysteria and stirring of passions that accompanied the entire "Scottsboro Case" is felt less in Birmingham than in any of the northern counties of Alabama.

e) Upon information and belief that the newspapers published and circulated in the City of Birmingham, and Jefferson County published and publish more moderate and less inciting and prejudiced accounts and editorials of the cases of your petitioners than the newspapers of any of the northern counties of Alabama.

f) Upon information and belief, that the City of Birmingham has a large metropolitan police force which may protect and provide adequate defense to your petitioners, their counsel and witnesses for the defense and may make unnecessary the calling of the National Guard to attend the trials of your petitioners.

g) That the jail in the City of Birmingham, where your petitioners are now confined and have been confined for many months, adjoins the court where your petitioners would be tried, and your petitioners can be transported to and from the jail and the court by interior passages, thus insuring the safety of your petitioners.

h) That the attorneys for your petitioners and witnesses on behalf of the defense can be more adequately quartered and protected in the City of Birmingham than in any of the northern counties of the State of Alabama.

i) That the removal of the trials to Birmingham will facilitate consultations between your petitioners and their attorneys.

j) That the City of Birmingham is the nearest city of the northern counties not otherwise objectionable for the reasons hereinabove set forth, which is most convenient to all the parties concerned with the cases of your petitioners and can be most easily reached by regular and frequent train service from all parts of the State and beyond the State.

Your petitioners are aware that objection may be made to the court's granting of the within motion for a change of venue on the alleged ground that Section 3381 of the Alabama Code allegedly provides that only one change of venue may be had. However, your petitioners aver that Section 3381 does not preclude the court from granting a change of venue in the present circumstances; and further, that if it be held that Section 3381 precludes the granting of a change of venue, that said Section would be in violation of the Constitution of the State of Alabama and of the Constitution of the United States and the Amendments thereto in its application to the cases of your petitioners.

71. Your petitioners attach to this petition and make part hereof as if fully set forth herein at length the affidavit of Claude Patterson, sworn to the 3rd day of November, 1933, marked Exhibit "N"; also a pamphlet entitled "A Reply to Southern Slanderer" which has been and still is, widely circulated and read in Morgan County and the surrounding Counties, and marked Exhibit "O".

72. Your petitioners respectfully request the Court that they be afforded the opportunity to prove by oral and other testimony of witnesses such allegations of the within motion as may be controverted or denied by the State of Alabama.

WHEREFORE your petitioners pray that an order be made to transferring the above styled causes of your defendants for trial to the Circuit Court of Jefferson County, and for such other and further relief in the premises as the Court may deem just and proper, for

all of which no previous application has been made except as hereinabove set forth.

Dated: November 15, 1933.

G. W. CHAMLEE
S. S. LEIBOWITZ,
J. R. BRODSKY,
ELIAS SCHWARZBART,
Attorneys for Defendants.

HAYWOOD PATTERSON,
OZIE POWELL,
WILLIE ROBERSON,
OLIN MONTGOMERY,
CLARENCE NORRIS,
CHARLEY WEEMS,
ANDY WRIGHT,
by G. W. CHAMLEE, Attorney,
Defendants and Petitioners.

State of Alabama, }
County of Jefferson, } ss.:

Haywood Patterson, Ozie Powell, Will Roberson, Olen Montgomery, Clarency Norris, Charley Weems and Andy Wright, make oath in due form of law, that they are the defendants and petitioners herein and that the facts as stated in the foregoing petition are true to the best of their knowledge and belief.

HAYWOOD PATTERSON,
OLIN MONTGOMERY,
WILLIE ROBERSON,
CLARENCE NORRIS,
OZIE POWELL,
ANDY WRIGHT,
CHARLIE WEEMS.

Subscribed and sworn to before me
this 19th day of November, 1933.

F. L. ERWIN,
Notary Public.
(Seal)

Exhibit "A".

COPY OF STATEMENT OF Honorable James E. Horton on April 17, 1933, in granting a continuance in the case of State of Alabama vs. Charley Weems.

HAROLD HARLIN
Official Court Reporter
Athens, Alabama.

Gentlemen, there has been set for trial this morning the case of the State vs. Charlie Weems. This is the second of what are known as the "Scottsboro cases." Something over a week ago the case of the State vs. Haywood Patterson was tried by a jury of this county. The nature of these cases, being a case where a negro is accused of the rape of a white woman, is such as would naturally excite resentment, and it is always difficult, even under the most favorable circumstances to obtain a fair and impartial verdict. The law has always recognized in cases of rape whether committed by one on a person of their own race, or by an attack on another race, that the accusation itself is apt to excite an undue sympathy for the accuser, and it enjoins upon the Court to see to it that this undue influence is removed so far as the Court may be able to do. There is a great deal of misinformation in the minds of the public generally in regard to rape cases in the South. I have been on the bench for over twelve years; more than ten of these years, among my duties has been the trial of criminal cases. The district which I now serve is composed of four counties lying on both sides of the Tennessee River, and the counties contain a mixed population. Formerly Madison County was also in this district, and it is one of the larger and more populous counties of the state, and it also contained a great number of negroes. During this period I have had only three cases where a negro was accused of an attack upon a white woman. Two of the indictments were for rape, and one was for an assault with intent to rape. This assault

with intent to rape occurred within Limestone County, the county of my residence. This was a case where a young northern girl, unsophisticated, and who was making a long trip for the first time, went aboard an L&N train at Cincinnati to come South. There was a negro porter on that train. As the train entered Limestone County the porter having helped her from an upper berth in which she had been sleeping, and she being the only woman in the car, followed her into the dressing room and tried to take liberties with her. Her screams caused him to desist and brought help. He got off of the train and escaped to Chicago. The Pullman Company helped the State of Alabama to have him extradited. He was tried and convicted. The other cases were tried in this the county of Morgan. In one of these cases a woman accused a negro of committing rape upon her and the trial was had before a jury. During the taking of the evidence many facts casting doubts upon the guilt of the accused were introduced, and after the case went to the jury, a former Solicitor, Dave Almon, a man with a big heart, who now sleeps in your city Cemetery, came to me, and told me some things he had heard convinced him of the innocence of the accused, and he was much disturbed lest the jury convict. The jury stood eight for acquittal, and four for conviction. Afterwards upon the motion of the same Solicitor, the case was dismissed. There was another case in this court. I will not go into details, but the evidence was of such a nature that the innocence of the accused appeared certain and the unwholesome case was thrown out of court. I live in the county of Limestone, across the river from this city, and that county has between thirty and thirty-five thousand population about one third of whom are negroes. That county was established when the state was admitted to the Union in 1818, and has contained a mixed population these one hundred and fifteen years. During that entire period, except for the one instance I have cited to you that occurred on the L&N train, the parties to which were residents of far distant states, there has not been a

single instance, so far as my information goes, and so far as I have been able to find out from diligent inquiry, of either a rape or an attempted rape by a negro upon a white woman. I am not denying that such things have not occurred in the South, but I am stating now the facts which I do know. I think this simple recitation of the facts are sufficient to disprove the egregiously erroneous ideas which exist in regard to the relations of the races in the South and that convictions follows accusation.

On account of certain influences, many of which to this court appear sinister, and are actuated by a desire to stir up and foment strife between the races in the South it has been difficult to try what are known as the Scottsboro cases upon the real facts. I am not now passing judgment upon the verdict in the case already tried. I know the Court had great difficulty in preventing extraneous influences having some effect on the jury. With these influences still existing, with the public mind still disturbed, with thousands of true and deeply patriotic citizens desiring that justice be done, and that the South appear in its true light, there has come to my attention a statement published, which to my mind makes it impossible at the present time to fulfill the high purpose of a Court of Justice. There is a paper published in this city—it is a daily paper, and has a wide circulation. I have no purpose to criticize this paper because it prints the news as its duty requires it. On the front page of this paper appears the following statement, which I will read:

(Statement)

I do not know whether the leading counsel for the defendant made the statement imputed to him. I am not stating that he did, but so far as it might influence this trial it could make little difference whether he actually made it or not. The effect will be the same: The published statement was uncalled for. It was addressed to a panel of highly intelligent jurors, and men who wished to do what was right in the case. But the state-

ment itself must of necessity make impossible any just and impartial verdict to be arrived at at this time. The accused negro must be the victim of this statement. His leading attorney would be a millstone about his neck. The impartiality of our courts must suffer as a necessary result. This statement attributed to the Attorney General of the State whether made or not, and blazoned in the first column of the front page has contributed to the already heated atmosphere which surrounds this case. No Court regardful of its duty to see that trials must be fair and impartial could under such baneful influences permit the trial of this case to proceed at the present time. It, therefore, becomes the unquestioned duty of this court at the present time to enter of its own motion a continuance of this case until such a time when in its judgment a fair and impartial trial may be had. Therefore, the case of the State of Alabama vs. Charlie Weems is continued and the court so orders.

Exhibit "B".

CIRCUIT COURT,

STATE OF ALABAMA,

Morgan County.

No. ——

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,

Defendants.

State of Alabama, }
Jefferson County, } ss.:

Victor Elwood, beign duly sworn deposes and says that he was in Decatur, Alabama, from June 15th

through June 24th, and between June 27th and through July 6th. That during that period he had conversations with numerous residents of Morgan County in their homes, on the streets and other public places with reference to the Scottsboro Case. Many of these conversations your deponent was unable to record because of the fact that he could not secure the name of the individual with whom he carried on the said conversation. The following conversations are literal duplications or as near literal as could be transcribed from memory a short time after the conversation. The date of conversation is indicated next to the name.

1. JUNE 19: Mr. and Mrs. Lumas, 4th Avenue off Molton St. said that those "niggers" should burn—if the state doesn't burn them then the people should take them out and lynch them, to teach the rest of the "niggers" a lesson. Also that the people shouldn't have let that damn Jew Lawyer come down here and if he comes again the people have made up their minds to take him and all the rest of the New York Jews and the "niggers" and lynch them. Mr. Lumas is a bookkeeper for the Cotton Seed Press in Decatur.

2. JUNE 19: Mr. Smith, proprietor of a Lunch Room on Molton St. 1 block off Second Ave., known as Heavy's Lunch Room, said that there shouldn't be any trial for them damn "niggers"—30¢ worth of rope would do the work and it wouldn't cost the County much. Also that he was ready to help lynch them. If the state don't kill them then the people here will—if they only bring them back. Those God darn New York Jews will be killed too if they try to come down here and clear those black bastards.

3. JUNE 19: Had conversations with a group of farmers on 2nd Ave., in Albany and they said that if them New York Jews came down with those black son of a Bitches, that they would lynch them together.

4. JUNE 21: Mr. Winton, 5th Ave., Decatur, said that the people won't stand for another trial of the Scottsboro "niggers" here. That the people will mob the "niggers" and the lawyers too.

5. June 21: Proprietor of American Cafe. He said that if those Jews come down here again the people will lynch them and the "niggers" too. He said that the sentiment of the people is very bad towards the "niggers" and if they are tried again in Decatur that there will be a neck-tie party.

6. JUNE 21: Mrs. Lawrence Frahn, proprietor of Frahn's Garage on 2nd Ave., Albany, Ala. He said that he was very bitter against the "niggers" and that he is ready to go with a mob to lynch them any time and also those damn Jew Bastards who are defending the "niggers." He said that the "niggers" needed no trial, only a rope around their necks. He also said that there are no 12 men in Morgan County who will listen to the defense side of the trial. He said if he was on the jury he would burn them "niggers" if he could and he believes that every man in Morgan feels the same.

8. JUNE 21: Proprietor of St. Joseph Cafe, Main St. one block off Bank St. He said that those "niggers" will get what's coming to them if they bring them back down here for trial and them damn Jew Lawyers ought to be hung with a rope along with the black bastards. That they will be taken for a ride if they ever come here again.

9. JUNE 21: John D. Wyker, proprietor of Hardware Store on Bank St. said that the Negroes got a fair trial and there isn't any use spending a lots of money in retrying them. That they should have strung them up when they caught them in Scottsboro, Ala.

10. JUNE 22: Jim West said that if the "niggers" are brought back for the trial that he will be ready to help mob them anytime. That the people will start the lynch-

ing and he will be right with them to lynch the "niggers" and the lawyers with them.

11. JUNE 22: Mr. Cattrel said that he believes the Judge is bought off and the people will lynch the "niggers" if they are ever brought back for another trial. The sentiment here is for a lynching both the lawyers and the "niggers".

12. JUNE 23: I had conversations with a group of farmers and their sentiment was very strong against the "niggers" and they said that Judge Horton has sold out to the L. L. D. and that if the "damn niggers" is brought back here for trial they will take them out and lynch them together with the lawyers. The farmers said that they can't get a jury from Morgan County that will give a different verdict than the last one. All the business men and the farmers want to see the "niggers" electrocuted—and it is impossible to get any other verdict except the death verdict in Morgan County.

13. JUNE 24: E M Lee, 423 Grant St. said that those negroes should have been hung before they reached Scottsboro, Alabama, and says that all the New York lawyers want is to make trouble between the two races of people.

14. M. A. Leoplard, 1109 7th St. said that he thought that the people should have done something before now about those "niggers" and that they better not turn them loose in Alabama.

15. JUNE 24: J V Joiner, Molton St. didn't have anything to say on the Scottsboro Case at all.

16. JUNE 24: A L Jolley, 304 W. Molton St. said that them damn Jews are just down here to try to make us let "niggers" sit on our white jury but they will play hell doing it, for they may go out for a ride if they come down here again.

17. June 24: A C Joiner, Somerville Road, said that if they bring them "niggers" back here for a trial that it will be the same as before because no jury of white men in Morgan County will give a different verdict than they got before.

18. JUNE 27: Mrs. Nelson, 703 6th Ave. West said that he believes the "niggers" got a fair trial except what Wade Wright said. Wright shouldn't have made such statements. And that Leibowitz, the New York lawyers, should be hung for saying what he did about the Southern jurors.

19. JUNE 27: C H Miller, 1722 9th Ave. South said that the Judge should have never brought the trial of those "niggers" to Decatur because it will give us a black name in the future.

20. JUNE 27: Mrs J W Murphy said that the Negroes should stay in their place and not try to go with the white people and that is what these Northern lawyers were trying to do—to make the negroes as good as the Southern white people. But they will never be able to do that here nor anywhere else in the south.

21. JUNE 27: E K McMurray, said that if they bring that "nigger" trial here again, they will get the same treatment as before and maybe the New York lawyers will get it worse.

22. JUNE 27: Mrs. & Mr. Mierdhart, Route #3, said those negroes might not be guilty but if the State of Alabama lets them go free, why it will make all the rest of the negroes worse and it will be dangerous for a white girl to go out alone.

23. JUNE 27: Mrs. Murphy, 221 Line St., said that they shouldn't spend so much money in trying to save them "niggers" when there are lots of poor white people that need money to live on—30¢ worth of rope would have saved all this trouble and would have been finished.

24. JUNE 27: Miss Elizabeth Morris, 101 Prospect Drive, said she didn't care what they do with the negroes for she doesn't follow the case very closely—but she said that it is making all the rest of the negroes meaner and harder to manage.

25. June 27: J. B. Leeman, 807 Molton St. said that if the trial is brought back here again that they would get the same verdict and if he was on the Jury he would be sure that the same verdict was rendered.

26. JUNE 27: W M Mosely, 603 Line St. said that those negroes should be killed so that there would be no trouble between the Blacks and the Whites. He said that he believes that they got a fair trial in Scottsboro, Ala.

27. JUNE 27: Frank Price, 208 W. 9th St. said that the Scottsboro negroes and those Jew lawyers are putting meanness in the minds of the rest of the negroes here in the south. So we got to get rid of them before it causes some serious trouble.

28. JUNE 27: W G Roberts, Agent for L&N RR Co. said that he would be very glad when they burned those negroes so that it would stop all that noise from the North and so the negroes will be kept in their place without any trouble.

29. JUNE 27: E S Morris, Freight Agent, said that the negroes should be punished but he does not know whether they should be burned or not because both girls were whores anyway, so it doesn't mean much. The only thing it will cause the whites to kill some of the negroes on account of this case.

30. JUNE 28: Mrs. L J Sneed, 1206 4th Ave. S. Didn't have much to say about the case but she wished they would never have brought the trial to Decatur.

31. JUNE 28: G H Wiggins, 603 4th Ave. W. said that we have to stick to our old Southern traditions and we will not let anyone from New York tell us how to run the South. We gave the negroes a fair, good trial and then we were called morons and fools by that Leibowitz and he better not show up here again.

32. N E. Wiggins, 337 Grant St. said that if the New York Jews think they can come down here and tell our courts what to do, they are damn fools. We don't stand for social equality with negroes and we won't have it in our courts. JUNE 28th.

33. JUNE 28: E T Thompson, 714 4th Ave. W. said that sentiment is strong here against those damn Jews and the Negroes also and no jury from this county will ever turn them loose.

34. JUNE 28: Mrs. Minnie Lyons, 520 Lafayette St. said there won't be safety nowhere in the South if them "niggers" are turned loose for it will make all the rest of them meaner and a white girl will be afraid to go out alone, she will be afraid that "niggers" will rape her.

35. JUNE 28: Mrs. Callahan, 401 Church St. said them "niggers" got what they needed and maybe it will stop so many cases.

36. JUNE 28: Mr. Oscar Pearson, 615 Vine St. said that he would like to see all of them "niggers" burn and all of their lawyers with them.

37. JUNE 29: P J Fowler, 1316 5th Ave. South, said that one dollars worth of rope would settle the Scottsboro Case for all of the time and that all the people of this town ought to use something like that on the Jews to teach them a lesson.

38. JUNE 29: J W Frahn, 432 E. Molton St. said he hoped they would bring the negroes here so that they might get the same verdict as before.

39: JUNE 29: A L Frazer, 1222 9th Ave W. said that everyone knows the negroes are guilty, so why not keep up the Southern custom and get rid of them. The first thing we know these smart Jew lawyers will get them turned loose.

40. JUNE 29: R B Graves, 1202 Second Ave. W. said that we ought to deal with the negroes like our grandfathers did and we would be rid of the whole thing.

41. JUNE 29: Mr. Garrett, 1207 4th Ave W. said that he had to give the I. L. D. credit for the fight it is putting up for the negroes, but it won't do any good because it is nothing but a Negro organization.

42. JUNE 29: John Hardy, 646 Grant St. S. said that we will keep our good old Southern laws and deal with the Negroes the same as before.

43. JUNE 29: John Sherman, Witson St. said that if he could get help he would help lynch the "niggers" if they came to trial here.

44. JUNE 29: Jim West of the St. Joseph Cafe said he would lead the mob just to see those "niggers" killed and he believes they will be lynched if they come back here.

45. JUNE 29: Charles Sherman, Wilson Ave. said that those "niggers" should be lynched on general principles if for nothing else.

46. JUNE 29: J D Dean, 401 Grove St. said that he isn't as sore at those "niggers" as he is at those Jews that come down from New York to defend those black bastards.

47. JUNE 29: R L Smith, 405 Grove St. said he wants to help lynch those damn Jew son of a bitches.

48. JUNE 29: Mrs. W M Bailey, 515 LaFayette St. said that if those "niggers" are turned loose, it will be dangerous for a white girl to go out alone.

49. JULY 1: Mrs Mattie Tati, Route #2 said that the negroes ought to be lynched, because if they are turned loose it will make all the negroes want to rape white women and girls.

50. JULY 1st: B F Tial, 412 5th Ave. W. said that the negroes shouldn't have been brought here in the first place, but since they are here they should have been heard and burned to get rid of the whole thing.

51. JULY 1: Mrs H W Rice, 205 6th Ave. W. said the Scottsboro Negroes were out to rape all the girls they could and that we must keep the negroes in their place to make it safe for white girls.

52. JULY 1: J H Riddle, Route #2, said that if there is a white man in Morgan County who would turn the negroes loose, he ought to be lynched himself.

53. JULY 1: Mrs Fred Robinson, Route #2 said that the negroes are getting too mean and that the Scottsboro negroes should be hung to teach all of them a lesson.

54. JULY 1: W M Vaughn, 904 Giddis St., said that the Negroes got a fair trial and that if they came here again they would get the same verdict as before.

55. JULY 1st: W M Johnson, 919 Giddis St., said that the negroes should have been hung before the lawyers knew anything about it.

56. JULY 1: Frank Painter, 909 Giddis St., said there isn't a man in Morgan County that would turn those "niggers" loose.

57. JULY 3: A M Cottrell, 213 3rd Ave S. said that if the negroes are brought here again for trial they won't get out so healthy the people won't stand for it any longer.

58. JULY 3: Mr. Clopton, 205 3rd Ave. S. said there was a mob at the first trial of these negroes and that there would be one at the next one to do what they intended to do at the first.

59. JULY 3: John Reynolds, 509 Ferry St., said that they better not bring them "niggers" to trial here again, if they would there would be a rope for the lawyers as well as the negroes.

60. JULY 3: John D Jess, 316 Grant St wouldn't talk about the case at all.

61. JULY 3: H E Jeffery, 444 Grant St. said he doesn't know much about the case but he believes the negroes got what was coming to them and that if the white people would let them they would think they are as good as the white people and that would be hell.

62. JULY 3: Carl Flowers, 530 Grant St. said that a good strong rope would save all of the court expenses.

63. JULY 3: J M Jones, 603 Vine St. said they would never get a jury to listen to those Jews from New York, because they are not as good as the "niggers".

64. JULY 3: Will Horton, 22 10th Ave. W. said that Ruby Bates sold out and so did Judge Horton but that they would never get a jury here in Morgan County to turn those negroes loose.

65. JULY 3: J E Norney, 8th Ave. W. said that he wished he could sit on the next jury, they would get the same verdict as before.

66. July 3rd: S F Hasey, 213 4th Ave W. said that it isn't customary for a negro to sit on a jury in the South and that it is too late to change it and that people from the north can't force them to change it.

67: JULY 6: R L Hopkins, 707 6th Ave. W. said that there never was social equality here and there never would be and that Jew Lawyers can't make a Southern white court allow a negro to sit on the jury.

68. JULY 6: Mr. McCray, 733 Vine St. said if the Scottsboro case is tried here again the people ought to lynch the New York Jew lawyer. The southerners can run the south as they had been and those Jew lawyers and northern negroes ought to stay out.

69. JULY 6: C W Flowers, 523 E. Vine St., said he wished they never had brought that damn "nigger" case here, it is just making a black name for Decatur. It ought to have been kept in Jackson County.

70: JULY 6: J G Hamilton, 305 3rd Ave. S. wouldn't talk about the case, just said he believed the negroes were guilty.

71. JULY 6: J V Hamilton, 1219 7th Ave. W. said he hoped the trial would be held here again because he wanted them to get the same verdict as before.

72. JULY 6: J. C. Brant, 133 6th Ave., said we can run this southern county by whites and that there will never be negro jury service here.

73. JULY 6: Mr. Brown, 713 9th Ave. W. said that the white people in the south wouldn't stand for negroes on the jury, it is not the southern custom.

74. JULY 6: Mrs. W R Campbell, 114 4th Ave. W. said if they have the trial here again, that old Jew lawyer and all the negroes should be lynched.

75. JULY 7: T B Rogers, 442 Grant St. said that we had to keep something over the head of the negro to have him under control. If the Scottsboro boys are set free, it would cause a race riot.

76: JULY 7th. J M Ryan, Route #2 Decatur, Ala., said that he would like to serve on the next jury. He would give them the same verdict as every other man in Morgan County would. There isn't a man in Morgan County that would let them loose, he said.

77. JULY 7: G H Smith, 615 E Vine St. said that the Jew lawyer better stay away, that there would be trouble at the next trial.

78. JULY 7th: Roy Smith, 321 E Molton St. said that a good rope and a crowd of men is what the "niggers" and the New York lawyers need and they may get it if they come here again.

The deponent also attended the motion for a new trial at Athens, Alabama, and while there mingled with local residents. After the hearing your deponent spoke to several of the people there and the universal expression which the deponent heard from all sides was. "Judge Horton ought to be lynched for giving the 'niggers' a new trial. He sold out to the New York Jews like Ruby Bates."

After the motion for a new trial the depeonent returned to Decatur, Alabama, where he spoke to people gathered on street corners, all of whom were residents of Decatur or of the same country side around Decatur and within Morgan County. The same expression was frequently heard to the effect, "Judge Horton ought to be lynched for giving the 'nigger' a new trial. He sold out to the New York Jews like Ruby Bates."

During these conversations another common expression heard was the following: "If they bring those 'niggers' back for a trial they're gonna be lynched"; also expressions such as "No jury in Morgan County will turn those 'niggers' loose." The deponent verily believes, that the sentiment of Morgan County and surrounding counties is so hostile against the Scottsboro

Defendants that it will be impossible to secure a jury in said Morgan County which can weigh the evidence fairly and impartially.

VICTOR ELWOOD.

Subscribed and sworn to before me this
8th day of August, 1933.

P. D. DAVIS,
Notary Public.
(Seal)

Exhibit "C".

CIRCUIT COURT OF THE STATE OF ALABAMA,

MORGAN COUNTY.

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,

Defendants.

State of Alabama, }
Jefferson County, } ss.:

VICTOR ELLWOOD, being duly sworn, deposes and says: That on the 22nd and 23rd days of August, 1933, your deponent visited the town of Hartselle, in Morgan County, State of Alabama and spoke with the persons whose names are enumerated below. That your deponent sets forth hereunder, opposite the name of each person so enumerated, the substance and effect of what each of the respective persons said with reference to

the above named case, and related matters thereto. That in some instances, and wherever possible, your deponent states the literal substance of such conversations.

1. W. T. Stewart, a dealer in farming tools, said: "Something ought to be done with them Scottsboro niggers for it's ruining the other niggers here in the south." He also said that they (the Scottsboro defendants) should be hung to teach the rest of the Negroes that that is what they can expect if they don't stay in their places.

2. D. W. McNeill, dry-goods shop-keeper, on Main Street and Highway, said that there would never be a jury in Morgan County that would give a verdict other than the one that was given in Decatur. He said that he believes they got a fair trial the first time.

3. Edd Templeton and his brother, proprietors of grocery store on Main Street, said that they would be willing to help lynch the "damn niggers" if they came back in Morgan County. "So it would put fear in the rest of the niggers and stop all this other business all over the country."

4. Dick Burleson said that they ought to take the nine negroes out and lynch them and "have it all over with for it's just causing more trouble among the niggers." He further said that they will never get a jury in Morgan County that will not convict them, if they have a hundred trials.

5. Otto Sharp, of East Main Street, said: "Them Scottsboro niggers should be taken out and killed." That he would help do it if he got a chance. That they will never get a jury that will turn them loose nor would be himself ever sit on a jury that had any Negroes on it.

6. S. E. Gibson, proprietor of clothing store on Main Street, said that if he was called for jury duty on the trial of these Negroes, he would do what any other man

in Morgan County would do, that is, "send the niggers to the hot-seat."

7. Leldon Rabin, said that if they bring the nine Negroes up in Morgan County again, "a mob will take them out and lynch them and that is what ought to be done with them and the New York Jew lawyers also."

9. C. C. Doss said that he believed the negroes got a fair trial and that "someone would be hurt if they tried them in this county any more."

10. Ollie Gibb, proprietor of a cafe on Main Street, said that they would never get a jury from this county that wouldn't convict the "black devils."

11. Drew Jones, rooming-house proprietor, said that "I would like for the niggers to get a fair trial but I don't believe that they can get a fair trial now in Morgan County."

12. J. W. Roberts, proprietor of dry-goods store on Main Street said: "It's impossible to get a jury from Morgan County that will listen to Ruby Bates or them New York lawyers, don't matter what they say."

13. L H Holloway, proprietor of furniture store on Main Street said that if he were ever called on the jury to try the Negroes he would "give them the chair just like they got before."

14. J. D. Alvis said that if he was called for jury duty he would send the nine boys to the chair and "If I could, I would like to see them New York lawyers sent to the same place."

16. Richard Williams, taxi-driver, said that if he was called on the jury to try the Scottsboro Negroes, he would send them to the chair, and he didn't believe that there was a jury in Morgan County that would do otherwise.

17. A clerk, name unascertained, at the hardware store on Broad Street, said that it was impossible for the Scottsboro Negroes to get any fairer trial than they got before in Decatur, and that if he were called for jury duty he knew exactly what he would do.

Your deponent spoke with about 100 other persons, residents of Hartselle, relative to the trial of Haywood Patterson and the other Scottsboro defendants, and in almost every instance they were of the very decided opinion that the Scottsboro defendants had up to then received as fair a trial as they could ever expect and many of the residents threatened that if the case came up again in Morgan County, they would see to it that the Negroes would either be sent to the electric chair, or, if a jury failed them, they would take the law into their own hands, lynch the boys and finish the case once for all. It was general sentiment that too much money had been spent on the case already, when it could have been ended by "a few inches of good strong thirty-cent rope."

In the very rare instances where residents said they would like to see the negroes get a fair trial, it was admitted that a fair hearing would never be held in Morgan County, because of the lynch spirit aroused in the inhabitants and because of the bitterness towards the publicity which the Scottsboro cases had occasioned in the public throughout the world.

Expressions of hate and malice against the attorneys for the defense and against the witnesses for the defense, particularly Ruby Bates and Lester Carter, were unnumerable, and voiced the sentiment of the inhabitants of the entire vicinity.

Your deponent became aware, in the time that he was in Hartselle, of such an intensity of hatred against all Negroes who were brought to trial on charges wherein white persons were alleged to have been raped or mole-

sted, that it is your deponent's firm opinion that a fair trial in the above case in Morgan County would be inconceivable, and out of the realms of all possibility, without even considering the danger of a lynching. The recent lynching of a Negro by the name of Royal on August 25, 1933, in Decatur, and the twice-threatened attempted lynching of Thomas Brown, a negro charged with the alleged rape of a white woman has thrown the entire county into an uproar, and the cry for blood against negroes charged with any manner of alleged crimes involving white persons has over-reached all bounds, and renders impossible a fair trial of Haywood Patterson at the hands of a Morgan County jury.

Many newspapers and periodicals all over the country and almost every newspaper in the South itself has been carrying editorials almost daily in the past week "mourning over the disgrace" to Morgan County that has come as a result of the mob spirit in the very recent Royal and Thomas Brown cases. From these indications, your deponent must come to the conclusion, as must everyone aware of the situation, that Haywood Patterson and the other defendants in the case, cannot receive a fair trial in Morgan County.

VICTOR ELWOOD.

Sworn to before me this
29th day of August, 1933.

THELMA BOLDEN,
Notary Public.
(Seal)

Exhibit "D".

CIRCUIT COURT OF THE STATE OF ALABAMA,

MORGAN COUNTY.

STATE OF ALABAMA

against

HAYWOOD PATTERSON, et al.,

Defendants.

State of Alabama, }
Jefferson County, } ss.:

VICTOR ELWOOD, being duly sworn, deposes and says: That he was in the town of Hartselle in Morgan County, State of Alabama, on the 29th and 30th days of August, 1933, and that he was in the town of Falkville, Morgan County, on the 31st day of August, 1933 and had many conversations with the residents of both Hartselle and Falkville about the Scottsboro cases and matters related thereto. Deponent, whenever possible, secured the names of those who ventured any opinion in the said matters, and lists them below together with the substance and effect of what each of the said persons said. In some instances deponent states the literal substance of fragments of such conversations. They are as follows:

1. Ed. Elliott, of Hartselle, said: "I believe that the people should let the law alone for them niggers will never get out of Alabama alive anyway. There isn't a jury in Morgan County that will turn them loose." He further said "Them damn Jew lawyers is the cause of all this trouble of the niggers in the South."

2. Mr. Signer, of Hartselle, said that all the Negroes should be taken out by a "crowd" and done with "the same as they done down in Tuscaloosa and it would stop so much the raping of white girls."

3. Mr. Gibson, of Hartselle, said they ought to "get next" to the National Guardsmen and "get them niggers like the officers did in Tuscaloosa."

4. The proprietor and the clerk of "Peoples Drug Store" in Hartselle, said that they felt that the people ought to let the law take its course with the nine negroes. They also said that the Northern lawyers should be kept out of the case.

5. Spoke with over fifty young men, all residents of Hartselle, whose names I could not secure, and they were all of the opinion that the nine "Scottsboro" negroes should be sent to the electric chair and "burn." It was also said that if they were released, and a "mob" formed to get them these young men of Hartselle would "like to be told of it so as to see them niggers hung to a tree."

7. The restaurant owner on Main Street, Hartselle, said that they ought to "burn Ruby Bates and them niggers all together." He also said "Tom Knight should have hit that damn Jew lawyer in the mouth for calling them niggers 'mister'."

9. Spoke to a number of farmers, all residents of Hartselle. It was the general opinion that if the nine negroes were acquitted they would never live to get out of Morgan County alive.

10. The proprietor of "Strand Barber Shop" in Hartselle said that there isn't a man in Morgan County who has not heard and talked about the "Scottsboro" cases and that every one of them had his mind all made up about the cases. A worker in the shop was of the same opinion.

11. Elbert Nicks and his wife, residents of Hartselle, said that the Negroes "ought to be hanged" and that they couldn't get a man out of Morgan County for jury duty in the "Scottsboro" cases that didn't have a fixed opinion in his mind as to his verdict.

12. A number of men in the "Strand Barber Shop" in Hartselle said that "The Jew lawyers should be run out of town if they come down here to defend them damn niggers." It was generally thought that the negroes had had a trial as fair as they could possibly get, and that there wasn't a man that didn't want to see the negroes either convicted or hung.

13. A clerk in "Brothers Meat Market" in Hartselle, said that "the people wouldn't stand for them New York lawyers to come down here again and do as they did before. They were trying to tear down our custom of the South and make the niggers have social rights with the white people."

14. A man who seemed to be the proprietor of "City Cafe" in Hartselle said that "they will never get a jury that has never talked about the case of them niggers in Morgan County, and it is impossible by Law to give them a fair trial in Morgan County with men on the jury who have fixed opinion."

16. A clerk in the J. L. Grovers store near the Hartselle Post Office said that his mind was already fixed if he were called as a juror in the next trial of the Scottsboro Negroes and that he thought it was the same with every man in the County.

17. Mr. Bridges, who runs a Barber Shop on West Main Street, in Hartselle, said that if he were called as a juror in the next trial he would do just as the Jury did in Decatur at the last trial of Haywood Patterson. He also said "They (the defendants) think the Jew lawyers and New York Money will save them. Well, they're

wrong for every man in Morgan County that is able to serve on the jury will convict them regardless of what the defense says."

18. A clerk in Hill's Grocery Store in Hartselle, said that the negroes didn't have a chance in Morgan County to be freed. He said they were sure to be convicted.

19. A man who seemed to be the proprietor of the J. H. Carshine Store in Hartselle, said that "there has been too much of this trial played up in the newspapers around here to give the negroes a fair trial."

20. The lumber inspector for the L & R Railroad Co. said he knew nothing about the "Scottsboro case" and he wouldn't be bothered whichever way it was decided, but he "didn't have no use for a nigger at all." They were alright to do some work, but then he was through with them.

G. N. Wallace, proprietor of a filling station on Route #3, Hartselle, said that they couldn't get a jury in Morgan County that could render a fair verdict. He said it was all because of the "Northern lawyers and the New York Jew money."

22. Spoke with a number of residents of Falkville on the streets of Falkville and it was the opinion of every one of them that "the court couldn't get a jury from Morgan County that would listen to anything in the way of evidence for the defense." They all said that the negroes should be electrocuted or lynched.

23. Mr. Couch of Falkville, said that he was a good shot with a pistol and that he would like to kill all of the "Scottsboro" negroes. He said that if he got a chance he would kill them and that every white man should do the same.

24. Spoke with a crowd of farmers in Falkville and they were all of the opinion that any jury picked in Morgan

County would have its mind made up long before the trial. They cursed the New York lawyers and all the counsel and witnesses for the defense.

25. The station agent at Falkville said he didn't think it was possible to pick a jury in Morgan County that would give the defendants a fair trial.

26. Mr. Drinkard, proprietor of garage in Falkville, said that if they didn't hurry and do something about these negroes that it would "break Jackson County." He said there wasn't a true jury in Morgan County that could be picked for that case. He said that every man in the County knew of the case and wanted to sit on the jury.

27. Dock Francis, and his son, both of Falkville, said that there wasn't a man in the county who was really eligible for jury duty. Mr. Francis said that there wasn't a man in the county who would not lie as to his personal opinion in order to serve on the jury.

28. Spoke with a number of working men and farmers at the corner garage in Falkville, and they all said that there weren't twelve men in Morgan County who didn't have their mind made up about the Scottsboro case. They said that nobody would listen to the "damn Jew lawyers or to the niggers or to Ruby Bates and Lester Carter."

Your deponent spoke with hundreds of people, other than those already mentioned, in Hartselle and in Falkville, and it was almost unanimous opinion that the "Scottsboro" negroes should be "burned or hung to a tree". The few that did think that defendants were entitled to a fair trial were certain that there weren't twelve men in Morgan County who would weigh the evidence and render a just and fair verdict.

Many threatened that when the case would come up, a "mob" would be formed, the defendants taken away, and hung, to "save all the trouble of a trial."

There was much talk of shooting, lynching, hanging and burning if the negroes came up for trial in Decatur again. The lawyers for the defense, the witnesses and the defendants themselves were threatened with all manner of death if the cases were heard in Morgan County where they could be reached.

From all of the above, deponent believes that defendants could not possibly get a trial in Morgan County free from extreme prejudice and hate and that it would actually be dangerous for defense counsel, for the witnesses and for the defendants to appear in Decatur.

VICTOR ELWOOD.

Sworn to before me this
2nd day of September, 1933.

THELMA BALDEN,
Notary Public.
(Seal)

Exhibit "E".

IN THE CIRCUIT COURT OF MORGAN COUNTY,
ALABAMA.

No. _____

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,
Defendants.

State of Tennessee,
County of Hamilton, } ss.:

Victor Elwood, being duly sworn, deposes and says: That on October 22nd, 23rd, 24th, 25th, 26th and 27th,

1933, your deponent was in Morgan County, State of Alabama.

That deponent had occasion to speak with many of the residents of Morgan County concerning the Scottsboro cases. Deponent states hereunder the substance of these conversations together with the names and addresses of those residents of Morgan county with whom he spoke in those instances where deponent could secure the same.

W. N. Courtner, Route 2, Decatur, Alabama. He said that the "Scottsboro niggers were guilty of the charge and them New York Lawyers are trying to free them, but they will never be freed in a Morgan County Court."

Pat Handly, Route 2, Decatur, Alabama. He said that he didn't believe that the National Guards assigned to the case cared much if "them niggers was taken by a mob."

S R Ryan, Route 2, Decatur, Alabama. He was of the opinion that most of the men who are qualified to sit on a jury in Morgan County will all have their minds "fixed" already as to what would be their verdict in the Scottsboro case.

Mr. Farrir, Route 2, Decatur, Alabama. He said that he believed that the Scottsboro negroes ought to be electrocuted and "it would learn the rest of the niggers to let white women alone from then on."

R. A. Auther, Route 2, Decatur, Alabama. He said that if he were called for jury duty on the Scottsboro cases that he would do as "any other southern white man; he would burn them if possible."

Raymond Moor, Route 2, Decatur, Alabama. He said that "all of them niggers and their Jew lawyers should be killed and the country wouldn't miss anything and it would learn the other niggers to stay in their places."

Mr. Griffith, Route 2, Decatur, Alabama. He said that "if all of the niggers was dead why the south would be better off and them Scottsboro niggers has caused lots of trouble with the rest of the niggers."

Proprietor of Log Cabin, Route 2, Decatur, Alabama. He and many others standing around were of the opinion that "them niggers didn't need no trial, only a good rope and one end over a tree" as one of them expressed himself.

Mr. Knight, Route, 2, Decatur, Alabama. He said "those damn black niggers thought they could rape white girls and get away with it, but they will get the chair, for no man in Morgan County will let them loose."

J. D. Morton, Route 2, Decatur, Alabama. It was his very vehement opinion that they ought to send Ruby Bates and Lester Carter and that New York Jew Lawyer all to the electric chair.

Proprietor "Little Jim Barbecue Stand," Hartselle, Alabama. He said that all the Scottsboro negroes were guilty and that any Morgan County jury would see to it that they got what was coming to them.

Mr. Smith, Route 2, Decatur, Alabama. He said, among other things, and if he were on that jury that would try the Scottsboro negroes, that he already knew what "his say would be", and that he would burn them.

E. L. Hayes, Route 2, Decatur, Alabama. He said that he didn't know very much about the case, but that he didn't think a true jury could be selected in Morgan County to sit on that Scottsboro Case.

C. W. Bowens, Route 2, Decatur, Alabama. He said that it was his opinion that a jury could not be found in all of Alabama to sit on a case like the Scottsboro case without having their minds already made up.

J. T. Wood, Route 2, Decatur, Alabama; he said that he had never known of a case that had taken so long to try and that he believed it pretty nearly impossible to get a jury that has never heard or read about the Scottsboro case.

J. E. Lee, Route 2, Alabama. He said that it wouldn't be safe for white women any more "if they turned the niggers a loose."

Joe Burt, Route 2, Decatur, Alabama. He said that "if they ever turn those niggers loose why it will make the rest of the niggers do worse than ever before."

J. H. Stone, Route 2, Decatur, Alabama. He said that there weren't twelve men in Morgan County that would let the Scottsboro negroes go free.

Mr. Parks, Route 2, Decatur, Alabama. He said that if he was on that jury that he would do all he could to convict the Scottsboro negroes again and send them to the electric chair.

L. A. Lott, Route 3, Hartselle, Alabama. He said that the Scottsboro negroes had got a fair trial before and that now "they ought to go ahead and kill them."

T. S. Storin, Route 3, Hartselle, Alabama. He said that it was certain that if the defendants came back to Morgan County they would get the same as got before.

Mrs. Harris, Route 3, Hartselle, Alabama. She said that they ought to hang the negroes and teach the rest of them not to bother with white women.

Mr. Weaver, Route 3, Hartselle, Alabama. He said that if the Scottsboro negroes were turned loose no white women would be safe anymore anywhere alone.

Mr. C. R. Penn, Route 3, Hartselle, Alabama; he was of the opinion that not only should the negroes be killed, but the lawyers also.

Mr. Cornell, Route 3, Hartselle, Alabama. He said that they should have let the crowd at Scottsboro take the negroes and that all of this trouble with a new trial would have been over with.

Mr. N P Murphy, Route 3, Hartselle, Alabama. He said that if he was selected as one of the jurors in the next trial of the Scottsboro defendants that he would give them the chair.

Mr. Woods, Route 3, Hartselle, Alabama. He said that the "damn niggers were raping too many white women and that it all started from the time of this Scottsboro nigger trial."

J. C. Black, Falkville, Alabama. It was his opinion that all of the Scottsboro negroes "should be done away with."

J. McCaig, Falkville, Alabama; he said that if "they let them Jews come down here and get the Scottsboro niggers free no white women would be safe here any more."

Mr. Gibson, Falkville, Alabama. It was his opinion that a few yards of rope would do for the negroes and would help stop all the attacks on white women by negroes.

Mr. Patrick, Falkville, Alabama. He said that the negroes should be hanged, "by their necks, and that it would end this trial and teach the rest of the niggers a lesson."

C. H. Parker, Falkville, Alabama. He said that he believed that the negroes had a fair trial the first time and that if they tried them again they will get just the same verdict as before.

Mr. Harvell, Hartselle, Ala., Route 2. He said that "the jew lawyers from New York were the cause of the

niggers not getting what they deserved, the chair, and these lawyers ought to be killed for saying that a nigger is as good as a white man."

R. B. Templeton, Hartselle, Alabama. He said that there wasn't a chance of getting a Morgan County Man who would sit on the jury and free the Scottsboro negroes.

C. H. Sandlin, Hartselle, Alabama. He said that he didn't keep up with the Scottsboro case but that anyway it was his opinion that they ought "to go on and kill the niggers and get rid of them."

Mr Hunt, Route 1, Hartselle, Alabama. He said "if the people here will let them niggers' lawyers come down here and try to break down our laws, why the niggers will be raping every white woman who goes out by herself. They ought to keep all the rest of them by making short work of these nine niggers."

T. C. Clark, Route 1, Hartselle, Alabama. He said he didn't care what they did with the negroes but that he thought that they couldn't get a man in Morgan County who could serve on jury duty in the Scottsboro cases if the truth were told about their opinions.

Mr. Summers, Route 1, Hartselle, Alabama. He said that the guards should have let a mob take the negroes out and that would have ended the whole Scottsboro case.

Mr. W. T. Tucker, Route 1, Hartselle, Alabama. He said that "if the New York jew come here again they ought to be taken and lynched along with the negroes."

Mr. Best, Route 2, Decatur, Alabama. Said it was useless to spend money on the negroes when a good strong rope would be cheaper and quicker.

Mr. A. S. Blackwell, Route 2, Decatur, Alabama. If was his opinion that the negroes are guilty and if they were freed it would cause lots of trouble.

Mr. Hamilton, Route 2, Decatur, Alabama. He said that if he were called for jury duty in the next Scottsboro trial that his mind was already made up as to what he would do.

B. H. McClellan, Route 2, Decatur, Alabama. It was his opinion that if one of the girls, the complainants in the Scottsboro cases, had been one of his people that there would not have been a chance for the law to take its course or to fool around with the case the way it has been.

Summerville, Morgan County, Alabama. Talked with a crowd of farmers and it was the opinion of every one of them, and they so expressed themselves, that it would be easy to get a mob to go after the Scottsboro negroes and that they, themselves would help to do it if anybody would only start it.

Green Gable Barbecue Stand, Route 3, Decatur, Ala. He said that he had talked with lots of men about the Scottsboro cases and that all of those he had talked with had fixed opinions of the case already. He further said that if he were to sit as a juror on that case, he would send them to the chair.

E. L. Perryman, Danville, Alabama. He said that he believed "the Scottsboro niggers should be sent to the hot seat" and he said that he hoped that Attorney General Knight would send them there.

Deponent further states that it was impossible to secure the names of the many hundreds of residents in Morgan County with whom he spoke about the Scottsboro cases. Invariably, however, almost each and every man he spoke with had a definite opinion that the Scotts-

boro defendants should be "electrocuted", "hung to a tree", "burnt", "sent to the hot seat", and in very many cases, "lynched." Those who thought themselves eligible to sit on a jury in Morgan County hoped that they would be allowed to act as such in these cases so that they would have the opportunity of convicting them and sending the defendants to death in the electric chair.

That most every one of those residents of Morgan County whose names are listed above, and many more whose names deponent could not secure seem to be men of more or less substantial means, with homes of their own in many instances, and such men as would very likely be called to sit on a jury panel in Morgan County. Time and again these men would make the statement that twelve men could not be picked from the whole of Morgan County who had not heard or read of the Scottsboro cases and who are not quite thoroughly familiar with the issues involved in these cases and as a result thereof who had not very definite and decided opinion as to the guilt of the defendants in the Scottsboro cases.

It is deponent's own opinion from what he has heard and seen in and about Decatur, Hartselle, Danville, Summerville and all of the outlying districts in Morgan County generally, that the defendants in the above case could not possibly secure a true hearing and a fair trial in Morgan County.

VICTOR ELWOOD.

Subscribed and sworn to before me
on this the 28th day of October, 1933.

J. B. WHITE,
Notary Public,
(Seal) Hamilton County,
Tennessee.

Exhibit "F".

CIRCUIT COURT OF THE STATE OF ALABAMA,

MORGAN COUNTY.

STATE OF ALABAMA

against

HAYWOOD PATTERSON, et al.,

Defendants.

State of Alabama, }
Jefferson County, } ss.:

JOHN WILLIAMS, being duly sworn, deposes and says:

That he was in Decatur, Morgan County, State of Alabama, on the 24th, 25th and 26th day of August, 1933, and spoke with many of the inhabitants of Decatur about the "Scottsboro" cases and related matters. Whenever possible, deponent secure the names and addresses of those with whom he spoke, and enumerates them hereunder, together with the substance of each respective persons expression of opinion regarding the "Scottsboro" cases and other matters relating to treatment of negroes accused of rape. They are as follows:

1. R. D. Hinkle, Stevensville, Rt. 1, a mine worker, said that he would like to see the negroes tried in court, but that he was afraid that the negroes might be lynched.

2. Lamar Moye, 610 W. Molton Street, student at the Un' ersity of Alabama, said the Negroes should be tried in court and acquitted, since in his opinion they were innocent of the crime charged. He also said that the

people in the neighborhood were of a mind to lynch the negroes rather than have them go through the procedure of a court trial.

3. Frank Rost, 1508 10th Ave. S., said: "Those damn Jew lawyers ought to be lynched. The negroes could be handled before they came down here."

4. A. E. Rogers, 120 7th Ave., West said: "It would be a good thing to hang a number of the niggers to break up all the raping around here."

5. T. K. Harrison, 630 Sherman Street, watchman, said: "All the niggers should be run out of the country. We have no use for the sons-of-bitches here. This is a white man's country."

6. L. O. Turney, Fortville, Route 1, farmer, said the negroes should be tried in court.

7. George Shaneyfelt, Route 1, farmer, said: "All the niggers should be hung or run out of the country."

Deponent spoke with many of those named and it was the opinion of every one of them that "niggers like these (Scottsboro defendants) should be taken out and swung from a limb." That it was a waste of money trying the Scottsboro negroes in court. They said: "It should be handled like it's always been handled—take them out and finish the job." That "we will get that nigger Brown when he'll be brought up for a preliminary hearing here in Decatur." (Thomas Brown and Royal, two young negroe boys, were sought after on the alleged charge of rape against a white woman. Royal was shot and killed by unnamed persons before he was arrested or actually charged with any crime. According to all the press, two attempts were made by a "mob" to lynch Thomas Brown. The Royal boy was shot in Decatur.)

Your deponent heard many of the last above named say in substance and effect: "If that Jew lawyer Liebowitz ever puts his foot in this place again, there will be a lynching." Speaking of the Tuscaloosa lynchings (three negro defendants in Tuscaloosa Alabama were taken away by a "mob" from the sheriff's deputies who were delivering them to the Birmingham jail for their safety. Two of the Negroes were shot and killed by the "mob" and one was later found severely wounded.) they said: "That's the way the Scottsboro niggers should have been handled." They also said: "Ruby Bates ought to be swung up herself, just like those niggers. She was bought over with Jew money."

Almost every resident of Decatur that your deponent spoke with was of the opinion that it was much more practical to lynch negroes accused of almost any crime, rather than to go through all the trouble of bringing them to trial.

Deponent is certain that if any of the people who spoke to him were chosen as jurors for the trial in the above named case in Morgan County, such persons would carry with them to the jury box a "lynch" psychology. Your deponent was impressed by the fact that of all the persons he met while he was in Decatur there were less than a handful who thought that Negro defendants generally, and much less the Scottsboro defendants, should be brought to trial in the regular course of law and order.

Many persons, a number of whom are named above, by their own statements implicated themselves in the recent attempt to lynch a negro charged with rape. They spoke freely of their attempts to "string the nigger up" and seemed to be proud of such exploits. This clearly indicates the spirit of the inhabitants of Decatur.

Deponent is certain that if the "Scottsboro" defendants are tried in Morgan County, they will not get a fair

trial, free from the "lynch" prejudice so openly expressed to him during his visit to Decatur.

JOHN WILLIAMS.

Sworn to before me this
2nd day of September, 1933.

THELMA BOLDEN,
Notary Public.
(Seal)

Exhibit "G".

CIRCUIT COURT,

MORGAN COUNTY,

State of Alabama.

No. _____

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,
Defendants.

State of Alabama, }
Jefferson County, } ss.:

JOHN WILLIAMS, being duly sworn, deposes and says: That he was in Decatur, Morgan County, in the State of Alabama, on the 28, 29, 30 and 31 of October, and on the 1 of November, 1933.

That he spoke with hundreds of residents of Decatur concerning the Scottsboro cases above-entitled, and secured expressions of opinion on the said cases and on matters related thereto.

Deponent lists hereunder such names of the residents of Decatur as could be secured, and divides the names into two categories. In the first category, deponent lists those names of residents who most vehemently were of the opinion that the Scottsboro defendants should be, as was expressed by many, "hung by their necks", "strung from a tree", "killed", "taken out and done away with", and "get their necks broke." That these residents of Decatur were of one mind, in that no quarter be shown to the Scottsboro defendants when they came up for trial in Decatur, and that the witnesses and lawyers were of one cloth with the defendants and should be treated in the same way. The instances above cited of remarks made by residents are but typical of what was actually said to your deponent with regards to all concerned in the Scottsboro cases. It was further said that "those Scottsboro niggers ought to be swung up with the Jews together"; "if those niggers aren't hanged, they better never let their feet hit ground in the State of Alabama"; "that Jew lawyer Leibowitz had better stay away from Decatur or it'll only be a one-way trip for him"; "Ruby Bates ought to be swung up right with the niggers, coming down here with those expensive clothes." It was the voiced opinion of many from the group of residents above mentioned that it would not be difficult for a mob to get at the defendants since the National Guard, stationed at the Court House or wherever the defendants and the lawyers happened to be, would not be too anxious to protect those concerned if the mob showed a bit of insistence.

Deponent spoke to many residents of Decatur, whose names he could not secure. Hereunder deponent lists the names and addresses of those residents in Decatur who fall into the first category above mentioned, and with whom he spoke:

1. C. E. Pupley, 207 Johnston St., Decatur.
2. A. E. Landers, 701 Second Avenue west, Decatur.
3. Walter D. Paster, 703 Second Avenue west, Decatur
4. V. R. Lee, 705 Second Avenue west, Decatur
5. C. W. Lenzy, 713 Second Avenue west, Decatur
6. K. J. E. Case, 721 Second Avenue west, Decatur
7. E. S. Landers, 722 Third Avenue West, Decatur
8. M. J. Mariom, 720 Third Avenue west, Decatur
9. Dan Kulkan, 712 Third Avenue west, Decatur
10. J. M. Belew, 708 Third Avenue west, Decatur
11. J. E. Burleson, 704 Third Avenue west, Decatur
12. I. C. Doss, 620 Third Avenue west, Decatur
13. B. M. Simpson, 618 Third Avenue west, Decatur
14. Henry Bowers, 616 Third Avenue west, Decatur
15. Earl Capus, 610 Third Avenue west, Decatur
16. A. G. Roper, 514 Third Avenue west, Decatur
17. S. P. Gann, 512 Third Avenue west, Decatur
18. J. W. Stover, 507 Third Avenue west, Decatur
19. P. G. Masterson, 511 Third Avenue west, Decatur
20. J. A. Thornhill, 607 Third Avenue west, Decatur
21. N. Miller, 609 Third Avenue west, Decatur
22. T. O. Praser, 615 Third Avenue west, Decatur
23. J. R. Grey, 617 Third Avenue west, Decatur
24. E. C. Gargers, 619 Third Avenue west, Decatur
25. M. Lovelady, 705 Third Avenue west, Decatur
26. Tom Roston, 707 Third Avenue west, Decatur
27. C. McMillan, 709 Third Avenue west, Decatur
28. G. V. Redding, 711 Third Avenue west, Decatur
29. A. F. Harris, 713 Third Avenue west, Decatur
30. T. E. Begger, 721 Third Avenue west, Decatur
31. F. O. Pitt, 708 Third Avenue west
32. C. Enteners, 622 Fourth Avenue west, Decatur
33. E. Weaver, 618 Fourth Avenue west, Decatur
34. W. K. Campbell, 616 Fourth Avenue west, Decatur
35. G. O. Sewell, 508 Fourth Avenue west, Decatur
36. S. D. Allen, 322 Fourth Avenue west, Decatur
37. J. M. Stokely, 316 Fourth Avenue west, Decatur
38. Doc Herse, 304 Fourth Avenue west, Decatur
39. W. A. Watkins, 608 Fourth Avenue west, Decatur
40. C. H. Campbell, 144 Fourth Avenue west, Decatur

41. A. M. Cartell, 218 Fourth Avenue west, Decatur
42. A. Atkins, 413 Fourth Avenue west, Decatur
43. W. W. Kincaid, 505 Fourth Avenue west, Decatur
44. J. H. Baker, 519 Fourth Avenue west, Decatur
45. E. K. Goode, 301 Fourth Avenue west, Decatur
46. F. C. Free, 303 Fourth Avenue west, Decatur
47. W. A. Hopper, 706 Fifth Avenue west, Decatur
48. E. L. Cunningham, 612 Fifth Avenue west, Decatur
49. S. H. Doublin, 602 Fifth Avenue west, Decatur
50. A. W. Billion, 518 Fifth Avenue west, Decatur
51. H. C. Slate, 406 Fifth Avenue west, Decatur
52. W. B. Greenhall, 412 Fifth Avenue west, Decatur
53. J. R. Wilson, 402 Fifth Avenue west, Decatur
54. W. M. Marshall, 322 Fifth Avenue west, Decatur
55. M. Simpson, 316 Fifth Avenue west, Decatur
56. T. T. Roberts, 304 Fifth Avenue west, Decatur
57. Ben Hill, 224 Fifth Avenue west, Decatur
58. L. W. Lee, 222 Fifth Avenue west, Decatur
59. F. D. Burleson, 232 Fifth Avenue west, Decatur
60. M. E. Brown, 209 Fourth Avenue west, Decatur
61. G. W. Walker, 221 Fourth Avenue west, Decatur
62. J. A. Henderson, 614 Fourth Avenue west, Decatur
63. S. B. Cross, 308 Fourth Avenue west, Decatur
64. F. Collier, 410 Fifth Avenue west, Decatur
65. H. S. Porter, 414 Fifth Avenue west, Decatur
66. S. D. Brock, 318 Fifth Avenue west, Decatur
67. H. E. Hicks, 316 Fifth Avenue west, Decatur
68. M. J. Mann, 302 Fifth Avenue west, Decatur
69. O. H. Clemons, 224 Fourth Avenue west, Decatur
70. W. N. Green, 408 Fourth Avenue west, Decatur
71. G. E. Pearson, 302 Fourth Avenue west, Decatur
72. J. C. Holesapple, 312 Fifth Avenue west, Decatur
73. C. F. Watterson, 306 Fifth Avenue west, Decatur
74. R. W. Mullins, 510 Fourth Avenue west, Decatur
75. S. F. Hozy, 213 Fourth Avenue west, Decatur
76. C. J. Henderson, 612 Fourth Avenue west, Decatur
77. H. E. Sanders, 201 Fourth Avenue west, Decatur
78. O. H. Clemons, 224 Fourth Avenue west, Decatur
79. H. S. Porter, 414 Fifth Avenue west, Decatur

80. E. E. Thompson, 202 Fourth Avenue west, Decatur
81. M. Dobb, 216 Fourth Avenue west, Decatur
82. W. L. Carol, 320 Fourth Avenue west, Decatur
83. M. Spruce, 318 Fourth Avenue west, Decatur
84. M. F. Martins, 404 Fourth Avenue west, Decatur.
85. J. Hardy, 206 Fifth Avenue west, Decatur
86. A. B. Pettey, 204 Fifth Avenue west, Decatur
87. D. Ayers, 202 Fifth Avenue west, Decatur
88. W. H. Turner, 321 Fourth Avenue west, Decatur

Stricken from last jury panel at Haywood Patterson trial.

89. F. Wear, 317 Fourth Avenue west, Decatur
90. E. Waight, 323 Fourth Avenue west, Decatur
91. C. W. Clardy, 607 Fourth Avenue west, Decatur
92. O. Napps, 609 Fourth Avenue west, Decatur
93. J. R. Gibson, 623 Fourth Avenue west, Decatur
94. D. D. Goode, 703 Fourth Avenue west, Decatur
95. A. M. Vinson, 716 Fifth Avenue west, Decatur
96. J. E. Stipe, 714 Fifth Avenue west, Decatur
97. J. C. Cleveland, 710 Fifth Avenue west, Decatur
98. G. G. Hamilton, 305 Fourth Avenue west, Decatur
99. J. A. Meadows, 315 Fourth Avenue west, Decatur
100. C. B. Ferguson, 413 Fourth Avenue west, Decatur
101. W. M. Minor, 401 Fourth Avenue west, Decatur
102. W. T. Willoughby, 611 Fourth Avenue west, Decatur
103. F. R. Ling, 613 Fourth Avenue west, Decatur
104. J. H. Pettey, 619 Fourth Avenue west, Decatur
105. A. R. Simpson, 718 Fifth Avenue west, Decatur
106. J. W. Cowen, 712 Fifth Avenue west, Decatur
107. L. P. Couch, 614 Fifth Avenue west, Decatur
108. A. Ryanhart, 520 Fifth Avenue west, Decatur
109. W. E. Ange, 522 Fifth Avenue west, Decatur
110. S. D. Brocks, 318 Fifth Avenue west, Decatur
111. R. J. Ray, 310 Fifth Avenue west, Decatur
112. W. W. Elnor, 216 Fifth Avenue west, Decatur
113. J. Hines, 208 Fifth Avenue west, Decatur
114. B. M. Brown, 136 Fifth Avenue west, Decatur
115. C. E. Lowery, 626 Fourth Avenue west, Decatur.

116. A. F. Latham, 713 Fourth Avenue west, Decatur
117. G. L. Thrasher, 720 Fourth Avenue west, Decatur
118. A. D. Dobbins, 620 Fifth Avenue west, Decatur
119. E. Hallan, 618 Fifth Avenue west, Decatur
120. M. E. McCluskey, 309 Fourth Avenue west, Decatur
121. C. F. Holesapple, 311 Fourth Avenue west, Decatur
122. E. Cregg, 313 Fourth Avenue west, Decatur
123. P. W. Simmons, 503 Fourth Avenue west, Decatur
124. E. M. Odun, 402 Fourth Avenue west, Decatur
125. E. H. Phillips, 601 Fourth Avenue west, Decatur
126. L. Paul, 714 Sixth Avenue west, Decatur
127. J. E. Landers, 704 Sixth Avenue west, Decatur
128. W. E. Hyde, 622 Sixth Avenue west, Decatur
129. G. M. Flantt, 611 Fifth Avenue west, Decatur
130. J. Phillips, 1207 Fourth Avenue south, Decatur
131. L. B. Davis, 1207 Fourth Avenue south, Decatur
132. I. M. Eubanks, 1112 Fourth Avenue, south, Decatur
133. B. A. Campbell, 1116 Fourth Avenue south, Decatur
134. H. G. Nelson, 1210 Fourth Avenue south, Decatur
135. G. L. Snoble, 1312 Fourth Avenue south, Decatur
136. C. P. Oday, 3120 Fourth Avenue south, Decatur
137. W. S. Saint, 1322 Third Avenue south, Decatur
138. L. D. Hollenworth, 2106 Third Avenue south, Decatur
139. John Bobler, 1204 Third Avenue south, Decatur
140. A. Andrews, 1116 Third Avenue south, Decatur
141. W. H. Anderson, 227 Fifth Avenue west, Decatur
142. H. A. Griffith, 239 Fifth Avenue west, Decatur
143. T. L. Baker, 241 Fifth Avenue west, Decatur
144. J. M. Money, 315 Fifth Avenue west, Decatur
145. R. W. Wear, 403 Fifth Avenue west, Decatur
146. W. Poteete, 405 Fifth Avenue west, Decatur
147. J. J. Akers, 409 Fifth Avenue west, Decatur
148. J. W. Chandler, 513 Fifth Avenue west, Decatur
149. L. Latham, 515 Fifth Avenue west, Decatur
150. B. L. Delasham, 615 Fifth Avenue west, Decatur
151. L. E. Limbley, 621 Fifth Avenue west, Decatur
152. Green Henshaw, 711 Fifth Avenue west, Decatur
153. L. R. Henderson, 719 Fifth Avenue west, Decatur
154. H. Hardin, 723 Fifth Avenue west, Decatur

155. J. H. Vaughn, 714 Sixth Avenue west, Decatur
156. D. L. Blackwell, 301 Fifth Avenue west, Decatur
157. C. E. Livingston, 303 Fifth Avenue west, Decatur
158. G. W. Kiser, 401 Fifth Avenue west, Decatur
159. L. D. MacMillan, 407 Fifth Avenue west, Decatur
160. H. C. Kitchen, 319 Fifth Avenue west, Decatur
161. L. McKelley, 508 Sixth Avenue west, Decatur
162. M. M. Prayor, 510 Sixth Avenue west, Decatur
163. F. Bowers, 609 Fifth Avenue west, Decatur
164. R. L. Hopkins, 707 Fifth Avenue west, Decatur
165. W. Gray, 711 Fifth Avenue west, Decatur
166. W. F. McClusky, 717 Fifth Avenue west, Decatur
167. J. F. Gust, 1303 Fourth Avenue south, Decatur
168. H. L. Love, 721 Sixth Avenue west, Decatur
169. J. L. Eaton, 723 Sixth Avenue west, Decatur
170. R. Bradford, 1305 Fourth Avenue south, Decatur
171. J. H. Putnam, 1209 Fourth Avenue south, Decatur
172. Jim Rittle, 1117 Fourth Avenue south, Decatur
173. Alien Hanel, 1108 Fourth Avenue south, Decatur
174. J. B. Grooms, 1122 Fourth Avenue south, Decatur
175. W. L. Elnor, 1206 Fourth Avenue south, Decatur
176. M. G. Gardel, 1216 Fourth Avenue south, Decatur
177. Earl Henderson, 1308 Fourth Avenue south, Decatur
178. E. M. Hase, 1302 Fourth Avenue south, Decatur
179. Charles Citizen, 1314 Fourth Avenue south, Decatur
180. H. L. Wheeler, 1320 Third Avenue south, Decatur
181. P. B. Berry, 1322 Fourth Avenue south, Decatur
182. J. B. Jennigan, 1308 Third Avenue south, Decatur
183. A. B. Teague, 1206 Third Avenue south, Decatur
184. Billy Comesford, 1204 Third Avenue south, Decatur
185. M. Hunter, 1104 Third Avenue south, Decatur
186. J. Martin, 11 Prospect Drive, Decatur
187. J. A. Yarber, 13 Prospect Drive, Decatur
188. W. J. Vines, 105 Prospect Drive, Decatur
189. W. E. Pire, 205 Prospect Drive, Decatur
190. E. S. Johnson, 211 Prospect Drive, Decatur
191. Jack Dilehay, 207 Prospect Drive, Decatur

192. B. Collier, 305 Fifth Avenue west, Decatur
193. G. E. Almon, 311 Fifth Avenue west, Decatur
194. I. L. Harding, 409 Fifth Avenue west, Decatur
195. T. L. Allen, 511 Fifth Avenue west, Decatur
196. H. Mathers, 613 Fifth Avenue west, Decatur
197. E. E. Hudset, 617 Fifth Avenue west, Decatur
198. E. D. McClauch, 619 Fifth Avenue west, Decatur
199. M. L. Brockens, 718 Sixth Avenue west, Decatur
200. R. E. Crapton, 721 Fifth Avenue west, Decatur
201. W. E. Reneger, 622 Fifth Avenue west, Decatur
202. W. Free, 618 Sixth Avenue west, Decatur
203. H. P. Pickens, 1120 Third Avenue south, Decatur
204. J. M. Renels, 1118 Third Avenue south, Decatur
205. C. D. Lamon, 717 Fifth Avenue west, Decatur
206. J. B. England, 614 Sixth Avenue west, Decatur
207. C. A. Carter, 612 Sixth Avenue west, Decatur
208. E. D. Graves, 521 Sixth Avenue west, Decatur
209. Tom Ratliff, 517 Sixth Avenue west, Decatur
210. D. B. Barnett, 611 Sixth Avenue west, Decatur
211. M. Petty, 617 Sixth Avenue west, Decatur
212. W. H. Lisby, 701 Sixth Avenue west, Decatur
213. E. W. Elem, 707 Sixth Avenue west, Decatur
214. W. D. Cobb, 1223 Fourth Avenue south, Decatur
215. A. L. Garnett, 1215 Fourth Avenue south, Decatur
216. G. Little, 709 Sixth Avenue west, Decatur
217. P. A. Smith, 1316 Fourth Avenue south, Decatur
218. C. J. Hazelwood, 1318 Fourth Avenue south, Decatur
219. C. Kemp, 1322 Fourth Avenue south, Decatur
220. C. Babler, 1322 Fourth Avenue south, Decatur
221. L. E. Putnam, 1202 Third Avenue south, Decatur
222. J. S. Willerford, 1112 Third Avenue south, Decatur
223. L. B. Hartongue, 1110 Third Avenue south, Decatur
224. J. W. Ezell, 613 Sixth Avenue west, Decatur
225. R. D. Nelson, 703 Sixth Avenue west, Decatur

Deponent spoke with many other residents of Decatur who, though not expressing themselves as violently as their townsmen said, among other things, that the "niggers have caused too much trouble and expense already." "They are guilty anyway, why have so many trials?"

Many were of the opinion that the two original complainants in the above case were as bad as the defendants, and that they should all be disposed of together. It was generally agreed, and so expressed, to your deponent, that regardless of the evidence which would come up at the trial, the defendants should be convicted and electrocuted, "so that the case would be ended once for all," and "stop the trouble with the niggers around here."

Not a single one of the many hundreds of Decatur residents with whom deponent spoke, thought that the Scottsboro defendants might be innocent and entitled to their freedom. This was the expressed opinion even where some professed themselves to be but mildly interested in the case itself.

Deponent lists hereunder the names and addresses of the residents in Decatur, where same could be procured. Deponent list thse names as falling under the second category as above mentioned.

226. Fred Patterson, 707 Second Avenue west, Decatur
227. W. R. Compton, 711 Second Avenue west, Decatur
228. Walter Dailey, 715 Second Avenue west, Decatur
229. Herman Golwin, 710 Third Avenue west, Decatur
230. C. M. Hornell, 702 Third Avenue west, Decatur
231. H. Tony, 612 Third Avenue west, Decatur
232. W. R. Wallace, 516 Third Avenue west, Decatur
233. J. W. Stanford, 510 Third Avenue west, Decatur
234. P. D. McCarver, 509 Third Avenue west, Decatur
235. Roy Garrett, 613 Third Avenue west, Decatur
236. E. E. Praser, 613 Third Avenue west, Decatur
237. W. H. Sampson, 701 Third Avenue west, Decatur
238. M. B. Thornton, 714 Third Avenue west, Decatur
239. Andrew Smith, 712 Fourth Avenue west, Decatur
240. W. R. Campbell, 616 Fourth Avenue west, Decatur
241. E. O. Hill, 324 Fourth Avenue west, Decatur
242. A. Nichols, 223 Fourth Avenue west, Decatur
243. D. L. Humphrey, 223 Fourth Avenue west, Decatur

244. W. Collins, 615 Fifth Avenue west, Decatur
245. W. L. Samuel, 516 Fifth Avenue west, Decatur
246. P. B. Newson, 308 Fifth Avenue west, Decatur
247. C. F. Justice, 214 Fourth Avenue west, Decatur
248. J. W. Loomis, 412 Fourth Avenue west, Decatur
249. C. N. Garrett, 207 Fourth Avenue west, Decatur
250. R. Robinson, 202 Fourth Avenue west, Decatur
251. J. L. Astor, 408 Fifth Avenue west, Decatur
252. M. McCutcheon, 418 Fourth Avenue west, Decatur
253. G. H. Wiggins, 601 Fourth Avenue west, Decatur
254. L. N. Robertson, 407 Fourth Avenue west, Decatur
255. E. Blaylock, 621 Fourth Avenue west, Decatur
256. A. L. Able, 610 Fifth Avenue west, Decatur
257. C. H. Gibson, 623 Fourth Avenue west, Decatur
258. W. F. Bush, 708 Fifth Avenue west, Decatur
259. T. Clem, 324 Fifth Avenue west, Decatur
260. W. H. Long, 226 Fifth Avenue west, Decatur
261. W. H. Lee, 701 Fourth Avenue west, Decatur
262. J. A. Garrett, 705 Fourth Avenue west, Decatur
263. D. McCary, 622 Fifth Avenue west, Decatur
264. R. G. Langley, 501 Fourth Avenue west, Decatur
265. S. T. Brown, 220 Sixth Avenue west, Decatur
266. T. O. Smith, 1202 Fourth Avenue south, Decatur
267. E. C. Wright, 1208 Third Avenue south, Decatur
268. C. T. Swatzell, 309 Fifth Avenue west, Decatur
269. R. H. Hacket, 607 Fifth Avenue west, Decatur
270. W. P. Walker, 608 Sixth Avenue west, Decatur
271. A. T. Ashford, 603 Sixth Avenue west, Decatur
272. R. E. Stamps, 1307 Fourth Avenue south, Decatur
273. G. Young, 1121 Fourth Avenue south, Decatur
274. Joe Toone, 1320 Fourth Avenue south, Decatur
275. Herman Phillips, 1122 Third Avenue south, Decatur
276. Lacey Terry, 109 Prospect Drive, Decatur
277. L. Hard, 515 Fifth Avenue west, Decatur
278. A. Allen, 509 Sixth Avenue west, Decatur
279. R. E. Raigon, 515 Sixth Avenue west, Decatur
280. Paul Fretwell, 713 Sixth Avenue west, Decatur
281. P. Siberts, 1108 Third Avenue south, Decatur

In view of all the above, deponent is convinced that the defendants in the case above entitled cannot secure

a fair trial in Morgan County and that defendants, witnesses and attorneys would be put in danger in life and limb.

JOHN WILLIAMS.

Sworn to and subscribed before me
this 14th day of November, 1933.

THELMA BOLDEN,
Notary Public.
(Seal)

Exhibit "H".

CIRCUIT COURT OF THE STATE OF ALABAMA,

MORGAN COUNTY.

MORGAN COUNTY.

against

HAYWOOD PATTERSON, et al.,

Defendants.

State of Alabama,)
Jefferson County,) ss.:

JIM JONES, being duly sworn, deposes and says: On August 22, 23 and 24, 1933, I was in Decatur, Morgan County, State of Alabama. I had occasion to speak with many of the Negro inhabitants of Decatur and in almost every instance the conversations ended in some expression of opinion on the so-called Scottsboro cases. I spoke with hundreds of Negro Decatur residents and have listed below the names, addresses and opinions of a number of them.

1. Hannah Shetby, 701 Grove Street, said that she was at the Patterson trial and was of the opinion that there was a "lynch" spirit right in and around the courtroom, and she felt that a fair trial could not be had in that courtroom in Decatur. She hoped that this case would be moved somewhere where the Negro defendants could be safe.

2. Lucille Rentle, 701 Grove Street, said that all through Morgan County a lynch atmosphere had been whipped up.

3. Lizzy Mosely, 705 Grove Street, felt that the Scottsboro boys could not get a fair trial in Morgan County and was very much afraid for them.

4. Hattie Martin, 714 Grove Street, said: "There is no need of even talking a fair trial." She didn't think the Scottsboro Defendants could get a fair trial in any part of Alabama. She said that since the Scottsboro cases had come up, Negroes all over were afraid for their own lives.

5. Callie Dane, 704 Grove Street, said that the case should be moved to a big place like Birmingham, where the police would protect the defendants, and where they wouldn't even need a state militia.

6. Eugene Stover, 402 W. Cherry Street, was certain that it would be dangerous to have the trial in Decatur.

7. Louise Johnson, 412 Cherry Street, said that since the last trial Negro women couldn't get jobs in Decatur any more. While she was working at a hotel in Decatur she made some statement favorable to the Scottsboro defendants and was promptly fired.

8. Carrie May Bailey, 402 W. Cherry Street, said that she knew before that the boys wouldn't get justice; that they wouldn't get it in that place.

9. Mattie Barker, Route 2, thought that the case should be taken away from Decatur.

10. Henry Simmon, 401 W. Cherry Street, said that if the case was heard in Decatur, there would be much bloodshed because of the lynch feeling there.

11. Savannah Stover, 402 Madison Street, felt that nowhere in the neighborhood of Decatur could the boys get a fair trial.

12. Carnella Smith, 416 W. Cherry Street, said: "Why, they just killed the Royal boy and he was only 16 years old. They're lynching them here right now. What's the use talking about the Scottsboro boys getting a fair trial here?"

13. Learlen Young, 419 W. Cherry Street, said that the Scottsboro defendants couldn't get justice in the first trial in Decatur and that they had no chance there again.

14. Jimmie Bufard, 526 W. Cherry Street, said that they would continue to lynch Negroes anyhow, and that he hoped the boys would be freed because he thought they were innocent.

15. Mary Pickett, 511 W. Cherry Street, said that the day after the Royal boy was killed, the negroes couldn't even go to the jobs in the white sections.

16. Louera Matthews, 518 W. Cherry Street, said that the only chance for a fair trial would be if the defendants were moved to a large city where they couldn't be lynched.

17. Emma Johnson, 526 W. Cherry Street, said she had followed the case from the beginning and from what she knew of Decatur the defendants would never be tried fairly there.

18. Rosie Kelley, 1017 Walnut Street, said that there would be more trouble if the boys were tried in Decatur. She said "The negroes are catching so much trouble now, if the case is tried here again, it will be too bad."

19. George Williams, 1017 Walnut Street, said that he was in court at the last trial of Haywood Patterson in Decatur. He heard a militiaman say that "Liebowitz and Ruby Bates ought to be killed."

20. E. J. Smith, 811 W. Vine Street, was afraid to even talk of the case, but said he hoped that the trial would not be in Decatur, for the boys' sake.

21. E. Hiter, 801 W. Cherry Street, hoped that the boys would get a fair trial. He said that if the case were tried around there, all the negroes would have trouble. He said: "I hope to God my son never gets into such trouble."

22. Archie and Mary Hiter of the same address were of the same opinion.

23. Lee Washington, 526 Cherry Street, said that he read about the case and if the case were taken back to Decatur, it would cause plenty of trouble and that all the negroes in Decatur thought the same way.

24. Vernard Garnard, 525 Cherry Street, said that he certainly wished the boys were free, because he felt that they were innocent.

25. Rachel Williams, 602 E. Cherry Street, said that she wished the case would be moved far away from Decatur.

26. Lank Jackson, 625 E. King Street, didn't think that the boys were guilty and hoped that they would get a fair trial.

27. Willie Harris, 524 E. Cherry Street, said that if the case were tried in Decatur, he would be afraid to stay in town.

28. Rosenbaugh Robinson, Route 4, box 9, said that if Thomas Brown was in danger of lynching, the Scottsboro boys surely would be, and that there would be trouble if the trials were held in Decatur.

29. Susie Smith, 320 Somerville Pike, said that she was at the last Patterson trial in Decatur, and heard a militiaman outside the courtroom that the militia wouldn't protect the boys from lynching.

30. Genie Hamilton, 320 Somerville Pike, repeated what her daughter Susie had said.

31. Mary Prince, 15 Pine Street, said that the Negroes were treated worse that ever before, that since the last trial negroes have been losing their jobs and that there was high feeling around Decatur against Negroes.

32. Calman Prince, 15 Pine Street, said that the Scottsboro defendants would never get a fair trial in Decatur.

33. Sennil S. Baker, 210 First Avenue, said there would be a lot of trouble when the case comes up again, and that all the negroes in the neighborhood were praying that the case would be taken way to a place where they'd have a better chance for a fair trial.

34. Elnara Whitiker, 14 Prince Street, said that she was asked by her employer what she thought of the Scottsboro boys. When she replied that she thought they were innocent she was laid off.

35. Sam Whitiker, 14 Prince Street, said that he didn't think the boys got a fair trial in Decatur.

36. J. D. Rice, 12 Pine Street, said he wished the case would be taken away from Decatur, that he had followed the case through from the evidence and thought the defendants were innocent.

37. Annie Rice, 12 Pine Street, said that it was getting worse for the negro in Decatur.

38. George Jude, 4 Pine Street, said he was sure the Scottsboro boys would be lynched if they were brought from Birmingham into Decatur.

39. Carrie Jude, 4 Pine Street, felt the same way about it.

40. Erleana Martin, 1116 E. Walton Street, said that mobs were being whipped up against the negroes and that if the case came up any further there would be lots of trouble, because of the recent killing of Royal and the attempted lynching of Thomas Brown.

41. Sarah Martin, 9 Spruce Street, hoped that the poor boys would be freed, and said that a negro couldn't hope to get justice in Decatur.

42. John Meadin, 617 Washington Street, said that the lynch spirit of Decatur was worse than ever before.

43. Lily Matthews, 9 Spruce Street, said that if the case comes up here again, "all us negroes will be chased around and given much trouble."

44. Sophia Toney, 22 Spruce Street, said she didn't think the Scottsboro boys could get a fair trial in Morgan County.

45. Lettie Maskin, 119 Maple Street, said that she was afraid of what would happen if the case was tried in Decatur.

46. Jones Maskin, 119 Maple Street, said that because a negro had just been shot down and killed in Decatur, the Scottsboro case should be taken away from there.

47. H. Jones, 116 Maple Street, said that there was a lynch atmosphere in Decatur, and wished she could help somewhat to get the boys a fair trial.

48. Catherine Jones, 116 Maple Street, sister of the above, said that it was a shame the way negroes are treated in Decatur.

49. Lee Harris, 16 Spruce Street, said he hoped the case would not be tried in Decatur again.

50. Annie Maskin, 115 Maple Street, said that from what took place at the last trial, it would be best if the case were taken to a city, where the defendants would be protected.

51. Orala May Pointer, 110 Maple Street, said that the boys didn't have a chance in Decatur, and that if the case were tried properly they would be acquitted.

As I have stated before, I spoke to hundreds of people in Decatur. Almost all of the Negroes said that they were being ill-treated and discriminated against more than ever before, since the Scottsboro cases had come up. That they hardly dared mention the names of any of the Scottsboro defendants or give any opinion as to the innocence of the Scottsboro boys.

From all that was told to me, I gathered that there was a fear hanging over all the negroes of Decatur that if the Scottsboro boys were ever taken back to Decatur for trial, they might never reach the court room. I hope that all this shows that the case should not be brought to Morgan County for trial but should be moved to a large city like Birmingham, where a fair trial may be expected and where in any event the defendants would be protected from any mob violence.

JIM JONES.

Sworn to before me this
28th day of August, 1933.

THELMA BOLDEN,
Notary Public.
(Seal)

Exhibit "I".

IN THE CIRCUIT COURT OF MORGAN COUNTY,

ALABAMA.

No. _____

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,

Defendants.

State of Tennessee, }
County of Hamilton, } ss.:

Jim Jones, being duly sworn, deposes and says: That on October 22nd, 23rd and 24th, 1933, your deponent was in Decatur, Morgan County, Alabama. That he spoke with many of the negro residents of Decatur concerning the Scottsboro cases, and secured expressions of opinion from them as to the possibility of obtaining a fair and impartial trial in the above cases in Morgan County. Deponent noted the substance and effect of each of these conversations as soon after they were made as was possible, and records the substance and effect of such conversations hereunder, together with the names and addresses of those with whom he spoke.

Daisy Pitts, 55 9th Avenue, Decatur, Alabama. She said that she had attended the last trial and that it was the worse frame-up she had ever seen. She was certain that the Scottsboro boys could not get a fair trial in Decatur since the whole county of white people were against a fair trial in this case. She also said that there

would be much trouble in Decatur if the case were brought back for trial.

Truly Mosely, Route 1, Box 23, Decatur, Alabama. He said that the negroes didn't expect to get justice in Decatur, and that it would be suicide for the Scottsboro boys were they to be taken back to Decatur to stand trial.

Gus Baldin, Route 1, Box 25, Decatur, Alabama. He said that many of the white people in Decatur had spoken to him about the cases and that they are "mad as hell" about the case and that there would be a heap of trouble in Decatur.

C. C. Carmichael, 74 9th Avenue, Decatur, Ala. He didn't think they could get a fair trial the last time and certainly not the next time, because of the recent lynchings of negroes all over Alabama. He said there would be great danger from mobs which would be formed and that if the mob was large enough even the National Guardsmen would not be able to help.

J. W. Kelley, 130 10th Avenue, Decatur, Alabama. He said he wished the case would be taken far away from Decatur and that it was useless to even talk about getting a fair trial in Decatur.

Henrietta Collier, 714 3rd Avenue, Decatur, Alabama. She said that if the case were taken to Decatur, many of the negroes who had lived in Decatur for many years would leave town for fear of their lives.

Gertie Byers, 3rd Avenue, Decatur, Alabama. She said that a lynch sentiment was being whipped up in the vicinity and that it would not be difficult for a good sized mob to "get" the Scottsboro boys and every body else concerned in the trial.

George M. Spragins, 3rd Avenue, Decatur, Alabama. She said she was afraid for her own boys to walk the streets

because of the trouble around Decatur, and that the Scottsboro didn't have a chance for a fair trial here.

Wira M. Spragins, 3rd Avenue, Decatur, Alabama, didn't want to say much about the case.

Wash Spragins, 3rd Avenue, Decatur, Alabama. He said the Scottsboro negroes never got a fair deal in Decatur, and that he didn't think they could get a fair trial in any place in Alabama. He said he wish the case could be taken to Chicago or some other place like that.

Hubert J. Cobs, 1010 Vine Street, Decatur, Alabama. He said that he wished there was some way he could help the Scottsboro boys, because there was no chance of their getting a just hearing in Decatur, and that "it would be hell" if the case came back to Decatur, and that it was his opinion that every negro in Decatur felt the same way about it. He was sure that this time there would be a mob much greater than before.

Robert Mastin, 512 LaFayette Street, Decatur, Alabama. He said that he had lived in Decatur for about thirty years and that the situation now, insofar as the treatment of negroes is concerned, is worse now than ever before. He said he was afraid for his own family to go out into the streets of Decatur at night. It was his opinion that if the Scottsboro boys started out from Birmingham to go to Decatur for trial they would never reach the Court House alive.

Lucile Miller, 316 3rd Avenue, Decatur, Alabama. She said she didn't know very much about the case, but that what she had heard from others, and she thought that the boys could not get a fair trial in Decatur.

D. W. Fitzgal, 402 3rd Avenue, Decatur, Alabama. He said it would be the worse possible move if the trial of the Scottsboro boys were held in Decatur. He said he had been living right in Decatur for twenty-five years

and that he expected that if any trouble started he would leave Decatur. He said he had heard this sentiment from many in Decatur. He thought there was no use to even talk about a fair trial.

Catherine Thomas, 402 3rd Avenue, Decatur, Alabama. She was afraid to say much about the cases except that there was no doubt that they could not get a fair trial in Decatur, and that all the negroes in the vicinity were scared when they heard the case was coming back to Decatur in a short while.

J. T. Fitzgal, 402 3rd Avenue, Decatur, Alabama; he said that the boys didn't get a fair trial in Scottsboro or Decatur and that there was no reason to believe that they would get justice in Decatur at the next trial.

Ester Fitzgal, 402 3rd Avenue, Decatur, Alabama. She says that since these cases have come up all the negro mothers in Decatur have been afraid for the lives of their sons, and she expected that if a mob came in town that there would be a lots of trouble for all concerned in the trial, and also for negro residents in Decatur, who are fearful of what is going to happen.

Emmett Steward, 402 3rd Avenue, Decatur, Alabama. It was his opinion that the Scottsboro boys could not get a fair hearing in any part of Alabama, because of the recent lynchings of the negroes accused of raping white women. He said it wouldn't do any good even if it were brought into the large cities of Alabama.

Charlie Black, 502 2nd Avenue, Decatur, Alabama. Said he wished the case could be taken away from Decatur for it wasn't at all possible that they could be fairly tried there.

Rosie Black (wife), 502 2nd Avenue, Decatur, Alabama. She was afraid her own boys would be given trouble if the case came back to Decatur, and that she would be

very happy if the case was taken some place where the Scottsboro boys would have the chance of a good trial.

Emma Draper, 507 3rd Avenue, Decatur, Ala. She said she was afraid of real blood shed at the time of the next trial and she wished it was possible somehow to take the case far away from the state of Alabama. There wasn't a place in the State where negroes could be tried fairly and without danger when such charges were involved.

Paris Draper, (husband) and John Draper (son), 507 3rd Avenue. They generally agreed with what mother Draper said.

Jessie Jackson, 507 3rd Avenue, Decatur, Alabama. He said that he hoped that the lawyers could get the case out of Decatur because all the negroes there were very much afraid of what would happen. He said he didn't think the Scottsboro boys could get an impartial verdict in Decatur.

Bessie Jackson, 613 Cherry Street, Decatur, Alabama. She said it was a dangerous situation for everybody, having the cases to come again in Decatur, and that all the negroes in Decatur would need protection from the mob spirit that was bound to arise about the time for the trial.

E. Jones, 505 3rd Avenue, Decatur, Alabama. Said there wasn't a chance for fairness in Decatur, and that it was known all over Decatur that a negro boy of sixteen had been killed by a mob a few weeks ago without even having a charge against him. That it would be ten times worse when the time came for the case to be heard and that all negroes in Decatur "hoped to God" it would not come there.

J. M. Vaughton, 1010 Vine Street, Decatur, Alabama. He said he believed that there would be much trouble in Decatur and that the case should be taken to a very large city where the boys would at least get protection from

mob violence. He further said that those boys should have been released a long time ago.

Lucille Williams, 1004 Vine Street, Decatur, Alabama. She said she had no doubt that there could not be a fair trial given to the Scottsboro boys in Decatur.

Robert Pane, 900 West 1st Street, Decatur, Alabama. He said that the Scottsboro boys are as good as lynched now if they ever think about bringing them back to Decatur. He further said that he had overheard white people saying "those niggers ought to be killed", and that he would be afraid to stay in town, the same as many others, if the case came back for trial into Decatur.

Mr. & Mrs. McCargles, 1000 Vine Street, Decatur, Alabama. They said they had been living in Decatur for many many years, but they never saw such a time as this. They were very much afraid that there would be blood running if the Scottsboro boys were taken into Decatur. They also said that mobs would be out to get Liebowitz and others in the case and that they had overheard white people say in the streets of Decatur: "He (Liebowitz) is a nigger lover. He ought to be lynched with the Scottsboro niggers." By all means they felt that the case should not be allowed to come to Decatur.

Stephen Wind, 827 Church Street, Decatur, Alabama. He said there wasn't a chance of getting a fair trial in Decatur. He heard that mobs were being formed and that a lynch sentiment was being whipped up in the vicinity and that once they get started it wouldn't take but a few minutes to get the job over with.

Kate Hall, 827 Church Street, Decatur, Alabama. She said she wished she could help in some way to keep the case from coming to Decatur. There would be lots of trouble and no chance of getting a fair trial.

Oscar Maze, 831 Church Street, Decatur, Alabama, didn't want to say much about the case.

Willie Maze, 831 Church Street, Decatur, Alabama. He said that if it would help the Scottsboro boys at all he would give his name as one who opposed the idea of bringing the case to Decatur.

W. Parr, 818 Church Street, Decatur, Alabama. He said that you couldn't pick a place in Alabama where there was no strong prejudice against negroes who are charged with crimes such as this. He said it didn't make any difference where the case went since they couldn't get a fair trial anyway.

Deponent spoke to hundreds of negro residents whose names he could not secure because of the fear, very often expressed, that they themselves would be made the victims of the lynch spirit now prevailing in Decatur. Almost every person deponent spoke with were unanimous in emphatically declaring that the Scottsboro boys would and could not get a fair trial in Decatur, and that it would be extremely dangerous for the defendants themselves, the witnesses and the lawyers to attend the next trial. It was the common understanding in Decatur that an organized mob would be formed composed of residents of Decatur, the immediately outlying districts and from adjoining counties to prevent a trial from even being held and the "string up" the Scottsboro boys, the lawyers, (especially Mr. Liebowitz) Ruby Bates, Lester Carter and the other witnesses and any one else who dared to concern himself in the case when it came up for trial.

It is deponent's own opinion from what he has heard and seen that the Scottsboro defendants could not possibly secure a fair and impartial trial in Morgan County.

JIM JONES.

Subscribed and sworn to before me on
this the 27th day of October, 1933.

G. W. Chamlee, Jr.,
Notary Public,
(Seal) Hamilton County,
Tennessee.

Exhibit "J".

CIRCUIT COURT,

STATE OF ALABAMA,

Madison County.

STATE OF ALABAMA

against

HAYWOOD PATTERSON,

Defendant.

State of Alabama, }
County of Jefferson, } ss.:

David Schriftman, being duly sworn, deposes and says: That he is an attorney and a member of the bar of the State of New York.

That he was in the towns of Falkville, Hartselle, Danville and Decatur, all in Morgan County, State of Alabama, on the 2nd day of September, 1933, and had numerous conversations with many residents of these towns, on the street, inside and outside of the stores and in public places generally, with reference to the "Scottsboro" case.

From conversations so had in the various parts of Morgan County, deponent is of the opinion that the defendants, witnesses and lawyers for the defense, and anybody associated with the defense will be exposed to serious danger should the above case be brought to Decatur for trial.

Your deponent is also of the opinion that a juror could not be chosen from the whole of Morgan County who has

not heard of or read of this case and who has not a definite opinion as to the guilt of the defendants.

Deponent draws these conclusions from statements actually made to him by residents of Morgan County and from opinions generally expressed. It was at no time necessary to draw any inferences or guess at meanings. The residents of Morgan County with whom deponent spoke did not veil their threats or couch their language in any uncertain terms. The "Scottsboro" defendants were threatened with lynching if ever they were brought back to Decatur for trial. Residents of the county were vehement in their avowals "we'll get one more whack at these damn niggers when they're brought back to Decatur." Such expressions were heard as "The black bastards should have been taken out and swung to a tree before. We'll make sure this time." "The Scottsboro niggers have cost too much already. We'll get it all over with when they're brought here (Decatur) again." "Just a bit of rope, and it will be over with." "That'll stop the raping of white women here."

These are typical examples of the expressions of the sentiment in Morgan County. It was said time and time again that if the defendants did manage to survive the trial and were acquitted they would never get out of the county alive, "Guardsmen or no Guardsmen."

Residents of Decatur expressed satisfaction that they had managed to shoot and kill James Royal, a young negro, on August 28th, 1933, who was about to be apprehended by authorities and questioned as to whether he was involved in the alleged raping of a white woman. James Royal was killed before any charge had even been placed against him. Another negro, Thomas Brown, also alleged to have been involved in the raping, was apprehended by the Sheriff and charged with the crime. Three unsuccessful attempts were made by a "mob" composed of residents of Decatur and nearby towns in Morgan County, to forcefully take Thomas Brown from

the Sheriff's custody in order to lynch him. The Royal and Thomas case has greatly aroused the inhabitants of Morgan County. They say the "law is too slow." "We'll take care of him ourselves like was done to the other niggers."

Deponent has examined the affidavit of John Williams, sworn to the 2nd day of September, 1933, and is not surprised that therein is stated the names of some of the residents of Decatur who openly and proudly admitted that they were a part of the "mob" that went to "get" Thomas Brown. Deponent has heard many similar statements.

Residents of Morgan County had nothing but praise and admiration for the "mob" in Tuscaloosa that shot and killed two negro defendants and severely wounded another while the negroes were being removed by the Sheriff's deputies to a place of safety.

It was indicated in no indecisive language that such would be their course in the "Scottsboro case." "The niggers will never leave Morgan County, trial or no trial."

The witnesses for the defense in the last trial of Haywood Patterson at Decatur were threatened with the same fate as the defendants themselves. "That Ruby Bates and Lester Carter had been brought over with Jew money from the north. They ought to be hung together with the niggers." And that "Decatur won't be a safe place for them if they ever come back here again."

Intense hatred was manifested for counsel for the defense. As one resident in Decatur said, "If them lawyers, especially that Jew lawyer, Leibowitz, comes here, it will be a one way trip. We missed him last time at the trial. He will never go back to New York if he comes here again and we'll take the others too."

Others said "Can't account for what's going to be done with them lawyers if they come here, even that Chattanooga lawyer, Chamlee, too." Deponent was shocked at the intensity and heat of these remarks and at the determination of the inhabitants of Morgan County to lynch all the defendants and those participating in the defense and to "settle this damn Scottsboro case once for all."

After the lynching of James Royal in Decatur and the killing of the two negro defendants in Tuscaloosa, the entire country, as manifested by the press, has condemned such murderous action on the part of "mobs" in Alabama.

Your deponent is of the opinion that if the "Scottsboro" cases are brought to Decatur for trial, it will be the signal for the most horrible of catastrophies that the south has yet witnessed.

In deponent's opinion, Jefferson County is the only county in Alabama because of its size and metropolitan character where all those concerned in the defense would be safeguarded from injury and where it may be possible to select a jury that will weigh the evidence and decide the innocence or guilt of the defendants without being swayed by prejudice or hate.

DAVID SCHRIFTMAN.

Sworn to before me this
14th day of November, 1933.

THELMA BOLDEN,
Notary Public.
(Seal)

Exhibit "K".

IN THE CIRCUIT COURT OF MORGAN COUNTY,

ALABAMA.

No. _____

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,

Defendants.

State of Tennessee, }
County of Hamilton, } ss.:

GEORGE W. CHAMLEE makes oath in due form of law:

That he is one of the attorneys in the defense of the case of the State of Alabama vs. Haywood Patterson, and that he has read the affidavit of Joseph R. Brodsky, verified the 14th day of April, 1933, and the affidavit of Joseph R. Brodsky, verified the 12th day of May, 1933, made for the purpose of correcting and supplementing the said affidavit of April 14, 1933, and the said affidavits are substantially correct, as he verily believes, some of the allegations being based on information and belief and some on affiant's knowledge.

It is absolutely true that on the 17th day of April, 1933, while on the way to the Court house in Decatur two persons jeered at counsel while on the streets and showed signs of hostility, and after reaching the court house this

affiant was shown by his Honor Judge Horton, a copy of the Decatur Daily, a newspaper published in Morgan County, and two other citizens, prominent white men of Decatur, Alabama, discussed with this affiant matters published in the paper referred to by the Court and which extracts from the paper had been made a part of the record by the opinion of His Honor in the case of the State of Alabama v. Charlie Weems, herein referred to, and for the purpose of this motion made a part of this affidavit for the purpose of having it read on the motion for a change of venue for Haywood Patterson and in support thereof.

The two citizens last referred to told this affiant that if Mr. Liebowitz appeared on the 17th day of April it was quite certain that some of the jury that tried the case of the State vs. Haywood Patterson would assault him and inflict upon him bodily harm and that other citizens of Decatur might take reprisals on him, and the atmosphere with reference to the trial of Haywood Patterson was in no sense sympathetic, but on the contrary was hostile to the prisoner and his counsel, in affiant's judgment because of the charge, in the first place, that a negro had assaulted a white woman, and in the second place, there was hostility because the question was being made relative to negroes being systematically excluded from the juries in Jackson County for about sixty years and in Morgan County for more than thirty years.

Affiant further states that his home is near the Alabama line. That he has had more or less business in the Courts of Alabama for more than thirty years and in his opinion it is a fact that is not open to question that in the state courts negroes do not sit on jury in any county in northern Alabama and that it is a matter of custom of many years standing that negroes are not placed on the jury list and the names not placed in the jury box but that the courts are conducted, as far as he knows, entirely by white jurors. Affiant states on information that in some of the federal courts in Alabama negroes serve on federal juries.

Affiant further states that while the trial of Haywood Patterson was in progress two witnesses from Chattanooga, Tennessee, attended the trial—one of them named Beatrice Maddox and one of them named E. L. Lewis and that these witnesses reported to this affiant that they had been insulted and threatened while in Decatur merely because they were witnesses and that E. L. Lewis lived in Chattanooga, the same city where affiant lives, and a picture of the home of E. L. Lewis was exhibited at the trial showing the place where he claimed Victoria Price, Ruby Bates, Lester Carter and Orville Gilley spent the night of March 24, 1931.

On the 17th of April, after this trial, the home of E. L. Lewis was burned, and neighbors of E. L. Lewis as well as E. L. Lewis himself, tell affiant they are of the opinion that this house was destroyed by fire because E. L. Lewis was a witness in this case.

Affiant further states that he has visited the City of Decatur on numerous occasions in the summer and fall of 1933 and that he has visited at hotels, restaurants, stores and public places and discussed the Scottsboro case on the streets and at various places in Morgan County, and that he has visited in Athens, Alabama, Huntsville, Alabama and Scottsboro, Alabama, as well as other places, and that there was great bitterness and resentment against the defendants and especially against Mr. Liebowitz, one of the attorneys in this case, and in such cases bitterness against the lawyers operates against the client on trial and makes difficult any chance for him to get justice when there is bitterness against his counsel.

Many political or semi-political questions may arise or appear to be raised, relating to matters of history in the State of Alabama.

In about 1901 the State of Alabama had a great campaign for the adoption of the section of the Alabama con-

stitution sometimes referred to as the grandfather clause, but whether designed to do so or not, had the effect of disfranchising the negroes in many counties, and also to make difficult their qualification for jury duty, and as a result negroes have been excluded from the juries in practically all of the counties in and near Morgan County for thirty years, and the present generation have been schooled, in a school of thought, that only white men should sit on juries and that only white men should hold office and do the voting and conduct the business of the State or county, as the case may be, and when it was suggested by the defendants, that under the Federal Constitution they were being deprived of Federal right of due process of law, this suggestion was resented and the bitterness due to this resentment was carried into the jury box and will continue to be carried into the jury box if this case is tried in Morgan County, perhaps, and it is exceedingly difficult to figure out any plan whereby these defendants could obtain a fair and impartial trial when these issues are pending and have to be determined in advance of such a trial. There has been so much bitterness that some persons interested in the prosecution have sought to inflame the people, because of that bitterness and because of the charges made against the defendants, who were negroes, and the prosecution made by a white woman, alleged to be a member of the underworld, and this bitterness has reached such a stage that notwithstanding the reputation of the prosecuting woman, many people are willing to take her word, as the basis for a bitter fight against these defendants, apparently forgetting and ignoring the idea that they were put on juries for the purpose of administering justice and not to carry out merely a political idea or a campaign to humiliate members of the black group.

Affiant further states that recently E. L. Lewis died and is reported to have become suddenly and violently ill between six and seven o'clock and to have died about two hours later, whereas prior to that time he had been on a hunting trip and was apparently in the best of

health, but before affiant heard of his condition he had died and was buried and grave suspicions are now entertained that he was poisoned. When E. L. Lewis attended Court in Decatur, at the time of the trial of Haywood Patterson, his house was destroyed by fire. Not long thereafter he reported that he was threatened with violence by parties whose names are unknown, in the town of Decatur, and after he returned to Chattanooga he reported to affiant that two white men had been to his house at Chattanooga in a large automobile and one of them had offered him money and financial assistance if he would agree not to return to Decatur to the next trial and he also stated that he was afraid that something would happen to him, because he had lost his home and his furniture and personal property, and he was afraid something would happen to him. Whether he died from natural causes or unnatural causes, affiant cannot state, but his home was on the edge of the woods known as the hobo jungles at Chattanooga, where tramps and persons who steal rides on trains congregate and assemble and where Lewis swore that Victoria Price spent the night when she was in Chattanooga, whereas she claimed that she spent the night at the home of a woman named Callie Broochie on 7th Street in Chattanooga, Tennessee; that affiant has published in newspapers at Chattanooga statements that one hundred dollars reward would be paid to find said Callie Broochie, because affiant believed that there was no such person in existence and that he had resided in Chattanooga for forty years with his office on 7th Street and that Seventh Street was a short street running by the side of the Court house and through the business district and that he had made inquiry and examined the city directories and was unable to find any persons that ever heard of Callie Broochie in Chattanooga, Tennessee, and that in his opinion there was no such a person living in Chattanooga or had lived in Chattanooga within the last forty years, and the story that Callie Broochie operated a boarding house on Seventh Street in March, 1931, in Chattanooga, in his opinion was untrue and without the slightest foundation in fact.

Affiant states that on November 6th, 1933, a friend of his, Mr. William Williams, told affiant that he had been to Scottsboro, Alabama, and that the bitterness in that section against the defendants, in the above styled cause, was particularly bad and especially among the rough element, such characters as would be expected to join in a mob or to start trouble if they had a chance and that there was no chance for a fair trial in that section of Alabama.

Affiant further states that another friend of his from Alabama was in his office in Chattanooga on November 6th, 1933 and stated that in Cullman County, which adjoins Morgan County, that the bitterness against the negroes was intense and that he was sure there was great bitterness in the southern part of Morgan County, because many people in that section naturally hated negroes anyway.

G. W. CHAMLEE.

Subscribed and sworn to before
me November 7, 1933.

G. W. CHAMLEE, JR.,
(Seal) Notary Public,
Hamilton County, Tennessee.

Exhibit "L".

Editorial Appearing in the "Community Builder" of Friday, November 3, 1933.

ALABAMA, FRIDAY, NOVEMBER 3, 1933.

THOUGHT INTERNATIONAL LABOR DEFENSE HAD DISBANDED.

Prior to reading a certain news story carried in the various daily newspapers last Sunday, The Community

Builder had felt and hoped that what is known as the International Labor Defense League, with headquarters at New York, had disbanded and there was no such organization in existence now. However, the following news item, sent out from Baltimore, Md., last Sunday and appearing in Sunday morning's papers, indicates conclusively that such an organization is still muchly alive and there is nothing its leaders will refrain from attempting to do in order to raise money. The news item date Baltimore, Md., Octo. 28th, follows:

> "A state police guard tonight stood over the grave of Euel Lee, hanged negro, who was buried today after Maryland penitentiary officials had won a legal battle for his body.
>
> 'Shoot to kill' if anyone offered resistance to the state conducted funeral, had been the order given deputy sheriffs who guarded the funeral.
>
> The order came from Judge Eugene O'Dunne of the Baltimore circuit court, who dismissed the temporary injunction against the funeral, secured by Bernard Ades, attorney for the communistic International Labor Defense League.
>
> Ades contended that Lee had 'willed' him the body. He wanted it, he said, to take to New York for a public funeral and demonstration."

As the Community Builder stated last week, the retrials of the negroes involved in the Scottsboro cases are scheduled to start in Decatur the 27th of this month. And in face of the feeling that exists at Decatur, as well as throughout the Tennessee Valley, against any lawyers claiming to represent the International Labor Defense League, we suggest that it will not be well for these lawyers to again show up on any soil at any point within this valley. We do not need that type of cattle down here, and their further appearance is wholly unneces-

sary. There are plenty of able lawyers here in North Alabama, who, if appointed or employed by the court, will see to it that the negroes to be tried at Decatur are given the proper representation.

Exhibit "M".

Editorial Appearing in the "Community Builder" of Friday, October 27, 1933.

NEGROES INVOLVED IN SCOTTSBORO TRAGEDY TO BE TRIED NOVEMBER 27.

Announcement was made by Judge W. W. Callahan of the Morgan County Circuit Court at Decatur Thursday, October 19th, that a special term of court would be called for November 27th, to again try the seven negroes involved in the Scottsboro tragedy that occurred something over two years ago at which time two white girls were alleged to have been assaulted while riding on a freight train. The above decision was reached after Judge Callahan had a conference with Judge James E. Horton and attorney general, Thos. E. Knight. The negroes to be re-tried are now, and have for some time been confined in the Jefferson County jail.

Judge Callahan, after the conference, issued a formal statement consisting of one sentence, saying:

> "At the request of the attorney general of the state and the suggestion of the chief justice of the Supreme Court of Alabama, I will call a special term of the circuit court of Morgan County to convene on November 27, 1933, for the purpose of trying the Scottsboro cases."

There were no attorneys who claim to represent the International Labor Defense League present when above announcement was made. And in view of the manner

in which the so-called attorneys from New York conducted themselves at previous trials of the Scottsboro case at Decatur. This newspaper feels that in fairness to the citizens of the Tennessee Valley as a whole, the negroes to be retried and especially lawyers hailing from the eastern states, that these particular lawyers remain at home and not make their further appearance at Decatur, to defend negroes involved in the Scottsboro case or otherwise.

Fact of the business is we do not believe one man by the name of Samuel S. Liebowitz has little enough sense to again make his appearance within the borders of the Tennessee Valley.

The Community Builder will have a special representative stationed at Decatur to report what happens daily at the re-trial of the cases that originated at Scottsboro.

Exhibit "N".

IN THE CIRCUIT COURT OF MORGAN COUNTY,

ALABAMA.

No. ——

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et al.,

Defendants.

State of Tennessee, }
County of Hamilton, } ss.:

CLAUDE PATTERSON makes oath in due form of law that he is a citizen of Chattanooga, Hamilton County, Tennessee, and that he is the father of Haywood Patterson, one of the defendants above named.

Affiant states that he was in Decatur at the time of the last trial of Haywood Patterson in April, 1933, and that while affiant was on the streets of Decatur he heard many threats of violence against the defendants in the above case and against the lawyers for the defense and against any one else concerned in the case.

Affiant heard one of the residents of Decatur say, referring to the attorneys, Mr. Brodsky, Mr. Liebowitz and others who were with them, and who were passing the street at that time on their way to the Court house, "Here comes those damn jew lawyers; they ought to be killed trying to defend those damn niggers."

Affiant spoke with many of the negro residents of Decatur at the time above mentioned and it was the general opinion of most of them that all the white people in Decatur and the territories in Morgan County were "dead against" the Scottsboro defendants.

Affiant has been advised and upon information and belief knows that E. L. Lewis, one of the Chattanooga witnesses at the last trial at Decatur died on October 13, 1933, from causes unknown to affiant. Affiant is of the opinion that the said E. L. Lewis may have been poisoned in an attempt to keep him from testifying at the next trial. Affiant bases this opinion on the fact that he was told by the said E. L. Lewis, deceased, a few weeks after the last trial at Decatur that some white people had come to the home of the deceased in Chattanooga and warned him that if he dared to come to Decatur again to testify in behalf of the Scottsboro defendants that he would never return back to Chattanooga. Affiant knows that the house of the deceased was burned down a short while after he left for Decatur to testify in the above styled cause.

CLAUDE PATTERSON.

Subscribed and sworn to before me on this
the 3rd day of November, 1933.

G. W. CHAMLEE, Jr.,
(Seal) Notary Public,
Hamilton County, Tennessee.

Exhibit "O".

COVER PAGE:

A REPLY TO SOUTHERN SLANDERS.

In Re: The "Negro Question" "Lynch Law" etc.

Being: An invitation to "The International Labor Defense" and all other associations advocating social and political equality to "GET OUT OF" and "REMAIN AWAY FROM" the State of Alabama. We regard your teachings as dangerous and a MENACE to our State.

Brief and Argument

by

WOODFORD MABRY

Attorney at Law, Grove Hill, Alabama.

FLY LEAF:

A REPLY TO SOUTHERN SLANDERS

In Re: The "Negro Question" "Lynch Law" etc.

FOREWORD:

UNTIL THE ADVENT of the INTERNATIONAL LABOR DEFENSE and similar organizations into the south with their dangerous teachings of Social Equality, Socialism, etc., never since emancipation have the relations between the white men and the law abiding negroes of the South been so cordial, or the confidence of the negroes in their white neighbors and employers so strong. Let it remain so, AND IT WILL, if you keep out of our state with your dangerous teachings, which, will beyond the peradventure of doubt result in UNTOLD HARM AND INJURY TO THE POOR IGNORANT NEGRO. You pretend to be his friend, if you

are, and cannot see that it is for his best interest and YOURS that you let him alone, then you are blind and FOOLISH. The SOUTHERN WHITE MAN KNOWS THE NEGRO and the NEGRO KNOWS THE SOUTHERN WHITE MAN.

The BEST HOPE of the negro of the South lies in the continuance and cultivation of these relations and the education of his children on PURELY PRACTICAL lines.

WE WILL NOT PERMIT YOU to enter the South with your teachings, in an effort to stir up STRIFE and DISCORD between the races, and we INVITE YOU to STAY OUT.

It seems so strange that little or no comment is made by northern papers when their own people make an effort to lynch a negro who attacked a white woman in the City of New York recently. (See Appendix).

A REPLY TO SOUTHERN SLANDERS.

The first plea that Robert E. Lee uttered after he had laid down his stainless sword was for the reconciliation of the lately warring sections of this country.

In his poverty, turning his back upon what we must term urgent invitations to ease and plenty, for we would wrong that great and lofty spirit to call them temptations, he dedicated himself to the service of the young men of the desolated South and the first words he addressed to them as they waited for him to point out the path which they were sure would be the w[illegible] honor and righteousness went out in an appeal fro[illegible]he depth of his great heart that they should remember that this was their reunited country to whose common flag and fortunes they should feel bound, alike by the pledges of their fathers and their own highest sense of duty.

In the hour of his hard won triumph Ulysses S. Grant, by his generosity of soul did more than all the statesmen

of his time to win back the South to the Union in sympathy, as well as in name.

And, standing, in Georgia's Capitol, that gracious and loving man touched the hearts of the whole country when he said that not the South alone, but the whole nation, should take a pride in the deeds of the men who fought and fell in the gray and should care for their graves. That was indeed a splendid sentiment, expressed by one of the truly great men of the North.

I wish that every part of the republic could be pervaded by the broad patriotism which holds that the man, north or south, who relumes the embers of sectional hate is the enemy of his country and brands himself unworthy of his high national birthright.

Prejudice between the North and the South, if indeed attention to facts and argument to the grand end that we may keep our race pure and advance the best interests of the Republic.

I do not for one moment question the sincerity of your honesty, but I can not drum up much respect for your judgment. You should not doubt our sincerity or our honesty, and the question as to whether you will admire our judgment depends upon the candor with which you will consider our views, and the frankness with which you will enter into deliberations on the subject.

If you are right, we want to know it, and if we are right, you should want to know it. I yield to no man in there be any, should be put aside and we should pay my admiration for our institutions. I yield to no man in my pride of race. I believe that no question can be settled until it is settled right.

Let us discuss the negro question and other questions with which we are now confronted, fairly and squarely, and if you think I am wrong, I hope that you will doubt a little more than you ever did before. Facts are facts,

arguments are arguments, and the man who brings the strongest facts and the best arguments will, in the end, prevail. The sunlight of truth will always break through all obstructions. Therefore, let us reason together in the spirit of friendliness.

Speaking for myself, alone, I would make this in fact, as in theory, a white man's government. I would grant to all men the fullest legal rights, but I would deny political privileges to the yellow man, the red man the brown man and the black man. We do not need these people in our civil or military service. Their presence there is a source of constant friction, trouble and danger. It is better for the negro himself to be deprived of privileges which cause him to be antagonized and which he is unfitted by nature to exercise. If the blacks do not wish to live here under the rule of whites, let them return to their native land where they can revel in the delight of voting and office-holding.

We owe the negro nothing. We found him a naked, snake-worshipping savage, and conferred upon him all the polish of civilization that he is competent to receive. We have taught him the use of tools, opened to him all the avenues of knowledge and supplanted his serpent fetish with the Christian faith. Having lifted him out of savagery, we are under no obligation to bear him ever on our shoulders. Maybe, it were charity to do so, but charity begins at home. "The man who provides not for his own household is worse than an infidel."

There is a soft spot in my heart for "Uncle Remus" and the "ole black mammy" with her crooning lullabies and corncob pipe. I was nursed from my infancy by one; but we are confronted now, not by these faithful servitors, but by the elective franchise "colored gentleman" and this modern "colored gentleman" has thrown but little light on the labor problem of the South, for as soon as he begins to learn "hic, haec, hoc," it's goodbye "gee, whoa, haw buck."

And speaking for myself alone, I would, if I could, restrict the schooling of the negroes to reading, writing and arithmetic. As a general rule, that is as much as they can absorb to advantage. A negro crammed on Latin, Greek, or on Physiology and Geometry, is a ruined nigger. After that he is too proud to work and has to live off the wages of some hired girl or industrious wife.

About the second year after the war a school teacher from up North came to one of the South Alabama counties and started the first nigger school in that county. She fixed the class so that every one knew his place, and it has been related that she trained each particular one to answer a particular question.

She would start with the one that stood head and ask him:

"Who made you?"

And he would answer promptly:

"God made me."

She would ask the one that stood second:

"Who was the first man?"

And he would answer, "Adam."

And so on down the class. Every one had learnt the answer to his particular question and said it over till he got it by heart. One Friday afternoon the teacher gave an exhibition to demonstrate what progress she was making. One of the scholars had to take the bucket and go to the spring after water, and while he was gone the teacher called out the class in Bible study. In the general confusion she didn't notice that the head scholar of the class was out of place, and so she put the first question to the one that stood second:

"Who made you?"

"Adam", said the scholar.

"No, no, that isn't right," said the teacher. "Try it over."

The scholar tried and tried, but he didn't know anything except "Adam" and "Adam" he would have it.

"Didn't God make you?" said the teacher.

"Nome, he didn't," said the scholar. "Dat nigger what God made has done gone to the spring to fetch some water."

The taxing of poor white people to furnish HIGHER EDUCATION for negro wenches and sassy bucks, is an OUTRAGE upon the WHITE and an injury to the negroes. The schools and colleges are turning loose on the country thousands of negro men and women who have been taught a smattering of the higher branches and who, in consequence, consider it beneath their dignity to work with their hands. There is absolutely no place in this land for the arrogant, aggressive, school-spoilt Afro-American who wants to live without manual labor. Therefore, it is a cruelty to the negro, as well as an injustice to the whites, to tax the latter to give "higher education" to the former.

The only salvation for the negro in America is the acceptance, in good faith, of his legal rights as the full measure of what is due him. The sooner he abandons his attempt to share political power and privileges with the whites, the better for him.

The white man made this civilization, THE NEGRO NEVER MADE THIS OR ANY OTHER. He has degraded every governmental system that he has been allowed to influence. The yellow men and the brown men cease to be savages; cease to be barbarians; evolve a

civilization, erect temples, purify their religion, rear palaces, refine their manners; adopt systems of jurisprudence, of government, of education; develop arts and sciences. Even black men, not negroes, do something of the same sort. The ancient civilization of the Hindu and the Moor was the very highest that the world had then known, if we except that of Greece. And the moral teachings of ancient Hindustan were not inferior to those of any nation of antiquity, but the negro in his native land, sat squat in his degradation, moved by no inner promptings to lift himself and improve his surroundings. I believe that our Caucasian friends in the North have been misguided and misinformed and therefore have acted and are now acting upon the idea that the negro is a Caucasian painted black. As a duty to our forefathers, to ourselves and our posterity, we must see to it that the negro makes no Haitian hell of the United States of America.

In the South, the aggression of the Socialist and the Anarchists, the Communists and the International Labor Defense are becoming bolder in spreading their dangerous teachings among the ignorant negroes of the South, and more urgent every day becomes the question—what are we going to do about it? The same thing is true of every State in the United States of America.

How is society to rid itself of such dangerous characters, white and black?

THAT IS THE QUESTION. We must find the answer or perish.

None of us can shirk responsibility. If, seeing things go wrong I do not speak out, I am a moral coward, or I am lacking in love of race and country. DUTY DEMANDS that you and I do our part by word or deed in the sublime work of bettering the world in which we live.

I once read a sermon: "PAY THOU VOWS TO THE MOST HIGH", was the text. It was a "bugle-call to duty," an appeal to men for "the sagacity of obligations"; a plea "for the redemption of those pledges which we make when we are lifted out of the dull routine of life by some great desire, some great inspiration, some great PERIL."

Addressing himself to the old soldiers of the Confederacy, the preacher said:

"You remember that battle field in Virginia; you remember the serried blue ranks that you were about to charge; you remember the awful stillness that came over you as you thought of the loved ones at home whom you might never see again. And you remember what you promised God you would do if you came out of the battle alive. You remember just how you felt when the word came ringing down the line, 'Forward March.' "

"PAY THOU VOWS TO THE MOST HIGH."

The essence of the sermon was, "Live up to your Duty and your Obligations."

DO WHAT YOU PROMISED TO DO.

I read another sermon on Duty, of the "higher path and the old land marks; of the honor that a man should guard as a woman guards her virtue."

He told of "the little ermine of the far North, the tiny creature of the snows, the unsullied Diana of the silent woods, that was so true to its instinct for purity, so loyal to the white drapery that God put around it that the hunters, seeking its life for its priceless fur, put filth around the burrow where the dainty thing lived; and how this little dumb brute, shrinking from a vile contact which would spoil its spotless covering, fell into the hands of its enemies, preferring death to contamination."

"Are the old lessons lifeless? Are the old glories gone? Are there no feet that tread the old paths?"

"Glorious and indestructible was the foundation of that civilization builded on the chastity which rose into 'the triumph of death' rather than sink into the degradation of personal impurity."

I hold no malice in my heart against the negro. There is not a negro who knows me that would hesitate to come to me for protection, and be certain of getting it. I have defended him in the Courts as a lawyer when his life, liberty and property was at stake. In his contracts, in his property, in his home and church, in his absolute rights as a human being. I would hate myself if I denied him the same treatment that is given to the whites. It is only when he claims to be our equal, wants to thrust himself into our social life, wants to claim equality in political privileges, wants to mingle the blood of his race with the bood of ours, wants to lower the standard of our civilization by mongrelizing the superior race, it is then that I take issue with him and those who are in agreement with him.

The negro has no place on the JURIES OF A WHITE MAN'S COUNTRY. ABRAHAM LINCOLN WAS OF THAT OPINION. In his speech at Charlestown, Illinois, on September 18th, 1858, on the JURY question and other questions with reference to the negro, Mr. Lincoln said:

"I will say that I am not, and never have been, in favor of bringing about in ANY WAY the SOCIAL AND POLITICAL equality of the white and black races—that I am not, nor ever have been, in favor of making VOTERS or JURORS of negroes, nor of qualifying them to HOLD OFFICE nor to inter-marry with the white people; and I will say in addition to this that there is a physical difference between the white and black races, which I believe will forever forbid the two races living together on terms of SOCIAL and POLITICAL equality. And inas-

much as they cannot so live, while they remain together there must be the position of SUPERIOR and INFERIOR, and I, as much as any other man, am in favor of having the SUPERIOR POSITION assigned to the white race." (Vol. 1, page 369, Complete Works).

Mr. Lincoln foresaw what the result of political equality would be. North Carolina furnishes a very good example and I quote an extract from the speech of Honorable John B. Knox in the Constitutional Convention of Alabama in 1901, as follows:

> "Mr. President, if our insight will not enable us to see this danger, we have an object lesson in our sister State of North Carolina. They, too, thought that after overthrowing the carpet-bag government and establishing white supremacy they were safe; and they were able to maintain good government for something like twenty years. But when the white men divided a large mass of ignorant and vicious voters found there opportunity, and the people of that State were subjected to such humiliation as I sincerely trust our people may be forever spared!
>
> Time will not allow me to dwell upon the conditions which prevailed in that State, but I will quote a paragraph from the testimony of Hon. John D. Bellamy, member of Congress from that State, given in the contest election case of Dockery vs. Bellamy, which will give you some idea of the conditions which prevailed in Wilmington, the principal city in the State, where the negro was in full political control. He says:
>
> > 'And the result of it was that a horrible state of misgovernment had been brought about; that night after night burglaries and robberies took place in town, without any detection; that within about eight hundred feet of the City Hall six burglaries had been committed in ten days without

detection; that one burglar had been arrested in a lady's residence, a negro burglar, was captured and held by the ladies until a police officer arrived, and that, although the offense was punishable by death, and not bailable, he was taken to the City Hall and there let off on his own recognition, or a straw bond, I have forgotten now which, and the negro escaped.'

Again he says: 'I recollect especially an incident of my own experience, where I prosecuted for Mr. Hamme, a very gallant and reputable citizen, a hat merchant of this city, who was assaulted in his store in broad daylight by Richard Holmes, a negro policeman and struck between the eyes with a pair of brass knuckles, and felled senseless to the floor; and that on three trials, although the defendant himself (Holmes) did not take the stand, and the evidence was uncontradicted, the jury failed to agree a single one of the three times, standing the first time nine whites for conviction and three negroes for acquittal; the second trial taking place at the next term of court all the white men on the jury stood for conviction and the negroes on the jury for acquittal; on the third trial, which took place at a subsequent term, it likewise stood eight or nine—I have forgotten the number—whites for conviction and three or four negroes for acquittal, according to the number of negroes on the jury; and finally the Fusion Solicitor, although I myself was associated in the prosecution, nol prossed the case without even consulting me.'

I will pause, too, to cite to you the editorial written by a negro editor of a negro newspaper published about this time in Wilmington, which he was emboldened to write because of his reliance on the protections he supposed the existing government would furnish—the publication of which resulted in a riot, causing the loss of many citizens:

'Poor white men are careless in the matter of protecting their women, especially on farms. They are careless of their conduct toward them, and our experience among poor white people in the country teaches us that the women of that race are not any more particular in the matter of clandestine meetings with colored men than are the white men with colored women. Meetings of this kind go on for some time, until the woman's infatuation or the man's boldness brings attention to them, and the man is lynched for rape. Every negro lynched is call a "big, burley, black brute", when in fact many of those who have been thus dealt with had white men for their fathers, and were not only not "black" and "burley", but were sufficiently attractive for white girls of culture and refinement to fall in love with them, as is well known to all.'

The publication of this letter in connection with other acts of aggression on the part of the negroes led to the Wilmington riot, which resulted in the loss of many lives.

The conditions which prevailed in the city of Wilmington were such that eight thousand of her best citizens were forced, for more than ten days, to suspend business and patrol the streets with Winchesters!

Mr. President, the negroes of Alabama greatly exceed in numbers those in North Carolina, and he who would believe that there is no danger to us in leaving the ignorant and vicious element of the race in this State possessed of political power, would be of a very innocent and confiding nature indeed.

The great work of this convention should be to establish the supremacy of virtue and intelligence in this State—to imbed it deep in the Constitution, so that future generations, when they come to view the

work that you have wrought, will revere and bless the memory of those who framed it. Thomas Jefferson, the great commoner, who was twice President of the United States, and honored as it falls to the lot of few men to be, when he came to die, turned his back on all his pomp and glory and counted as the greatest achievement of his life what he had done to benefit his fellow men! "Let it be written," he said, "upon my tomb, 'Here lies Thomas Jefferson, author of the Statute of Religious Liberty in Virginia, Founder of the University of Virginia, and the author of the Declaration of Independence.'"

To my mind, the most dangerous doctrine that can be preached to the people of America is that Social Equality, mixed marriages, mixed schools, and political equality offer the solution of the Negro Question. The facts in the case force upon me the conclusion that the true way out of our troubles is to give to the negro, fully and universally, those absolute rights which the law of nature is said to give to every human being. But POLITICAL PRIVILEGES, voting, office-holding and ACTING AS JURORS he should not have at all. To exclude him utterly from affairs of government, would mean peace, to him and to us. As to social equality, that would inevitably breach the walls of racial purity. Mixed marriage would become more common, the hybridizing of the race would set in, and nothing, then, could prevent the downward movement of the great Caucasian race.

Unfortunately, four millions of people, who had recently been "gibbering savages" were given their freedom so suddenly that they did not know what to do with it. This being the case, the vindicative rage of such men as Thad Stevens and Charles Sumner brought forth the Reconstruction laws and the Fourteenth and Fifteenth Amendments. These acts of legislation were ambitious efforts to do something which the Almighty alone could have done—to make a mass of ignorant negroes the equal of a mass of civilized Caucasians. The effort was a crime the experiment a calamity.

It took England five hundred years to abolish white slavery in her government. The Great Creator of the Universe, when He determined to take the Jews out of Egyptian bondage, with a high hand and outstretched arm, kept them out of Palestine for forty years, until all but two of the old slaves were dead, knowing they would not fit for freedom or citizenship. It required a thousand years of education to fit the Saxon and the quick-witted Celt for the duty and responsibility of American Sovereignity. Ten thousand years of civilization and education could no more qualify the negro for self-government that it could raise to the intellectual level of a jackass the members of the International Labor Defense Association, Socialist, Communists, Social-Equality Advocates and the others.

The incapacity of the race to step at once from a position of servitude to one of power was evidenced by the infamous acts of the reconstruction period. Southern chivalry bowed its head in enforced submission to the rule of the negro in conjunction with the carpet-bagger. God pity the Southern white man of those days. Every indignity and every abuse was heaped upon him. The infamy of that period is a blot upon the pages of our history that time can never efface. The descendants of men who framed the Constitution, who directed its course for nearly a hundred years, who adorned the pages of American history with their achievements, were denied the b'lot or a part in the direction of the government. In th halls that had echoed to the eloquence of great Southern statesmen sat the ignorant African, controlled by the scum of the North. No bill was too fraudulent for their votes, no crime too dastardly for their avarice. The fairest section of our country was threatened with a condition having few parallels in history. The NATION and the WORLD, owes a debt of gratitude to the men of the South, who, in the face of Federal bayonets, in the face of all the power and prejudice of the general government, wrested the Southern states from the control of ignorance and vice, rose above the barbarian, showing again to the world that brute force is not superior to

mind. For a time, though, might triumph over right, and fraud vanquished justice, "until the cry almost trembled on the lips of the stricken South, 'Oh Lord, Our God, hast Thou forgotten Thy people?"

History has put its stamp of disapproval upon the acts of reconstruction. No such blunder will be made again. The very party and men who thrust this upon the South have lived to see the error, and we will surely come to the realization of the paternal prophesy and promise of Him who was appointed to replenish the cleansed and quickened earth, that "God shall enlarge Japhet and he shall dwell in the tent of Shem; and Canaan shall be his servant."

We are now confronted with another dangerous foe, The International Labor Defense, Socialist, Anarchists, Communists and other associations of a like nature, whose dangerous propaganda among our negroes cannot result in any good and we propose to keep them outside of our borders.

White supremacy should be established by law.

I take the position that the Fourteenth and Fifteenth Amendment of the Constitution should be repealed. The Fourteenth Amendment is a flagrant violation of natural law, of the law that the greater and less cannot be equal, that matter must be subject unto mind, that wisdom was born to rule and ignorance to obey. To deny that the greater shall govern the less intellect is to abrogate man's right to rule the beast and God's authority over Adam's sons. Is there anything strange about the proposition that men whose ancestors wrung Magna Charter from King John and recognition of independence from King George, should decline to be put on the same political and social plane with the lowest race of which history has made any record?

THE INTERMARRIAGE OF THE RACES SHOULD BE PROHIBITED BY LAW.

In Alabama, we have the following law, towit: "If any white person and any negro, or the descendant of any

negro intermarry, or live in adultery or fornication, with each other, each of them must, on conviction, be imprisoned in the penitentiary for not less than two nor more than seven years."

I submit that the same law should be on the Statute Books of every State in the United States of America.

If not,—WHAT IS THE OBJECTION?

WHITE CHILDREN SHOULD NOT BE PERMITTED TO ATTEND THE SAME SCHOOLS AS NEGRO CHILDREN. Do you think they should?

In Alabama we have a Constitutional provision as follows:

"* * * Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race."

ALL EQUALITY OF SOCIAL RELATIONS WITH THE NEGROES SHOULD CEASE, which would be only the carrying out of the instinct of racial self-preservation. IT IS GOD GIVEN, and its purpose is the high and holy one of keeping PURE the blood of the SUPERIOR RACE. To do this is best for the white race, best for the negro, best for our country, best for MANKIND.

"Unhappy White, when life was in its Spring.
And thy young hope just waved its joyous wing,
'Twas thine own hand that struck the final blow
And helped to plant the wound that laid thee low.
So the struck eagle stretched upon the plain,
No more through rolling clouds to soar again,
Viewed his own pinion on the fatal dart,
And winged the shaft that quivered in his heart,
Keen were his pangs, but keener far to feel
He nursed the pinion which impelled the steel,
While the same plumage that had warmed his nest
Drank the last drop of his bleeding breast."

CAUCASIAN CIVILIZATION.

When some newspaper, magazine and people who have not studied the question, take the position that the negro should be made the SOCIAL and POLITICAL equal of the white man, they are threatening CAUCASIAN CIVILIZATON; they are in agreement with Socialist, Anarchist, Communists, The International Labor Defense and the others who offer the negro absolute equality with the whites, SOCIAL AND POLITICAL.

The doctrine that they are trying to teach would mongrelize the higher race. Racially, we people of the South are yet pure, and we shall so remain. GOD IN HIS WISDOM has given to the Caucasian race, a superiority of the brown peoples, the yellow and the black. The superior race should use this superiority for the BETTERMENT OF THE WORLD and not SINK IT into a debasing, UNNATURAL equality which some ignorant, unthinking people are seeking to do. ANYBODY who knows ANYTHING about the history of nations, knows that a superior breed crossed with an inferior, sinks to a lower level.

Is it not true that the mongrel is the trouble with Cuba today? Is it not true that in Cuba, there is almost no pure blood at all—and who to-day will say that it is capable of self-government? Any of the Caucasians, the Teutons, Celts, Normans, Saxons or Angels can fuse and nobody will be hurt but when the higher races fuse with the lower, ruin is certain to follow. MOST ANY SCHOOL BOY knows that to be true, but the ignorant advocates of social equality, between the whites and the blacks, DO NOT KNOW IT, or they have completely lost sight of race preservation.

There is no "prejudice against the negro" in the South but we refuse to class as one of our brothers the black African whose skin nature painted black. History proves, BEYOND THE PERADVENTURE OF A DOUBT that

the negro is of an inferior race, but the able scholars who constantly taunt the South about "prejudice against the negro" seem to be ignorant of an academic fact, or else, the FACT of his inferiority is lost sight of entirely. Don't they know about the thick skull God gave him? Do they refuse to see the TRUTH OF HISTORY? Don't they know that the negro HAD AS MUCH TIME AND AS GOOD "OPPORTUNITY" to evolve a civilization from within as ANY OTHER RACE HAD? What civilization has he evolved? Answer that question.

Africa has always been the home of this lowest type of humanity—the negro. No remains of antiquity yet discovered exhibits them as being master of any other territory. When wall paintings, sculptured groups, or tablet inscriptions prove their presence in any other land, then negroes appear as captives, or slaves, as envoys or messengers. Records which admit of no doubt and which reach back into the very dawn of history, picture this lowest human being, giving him the very same features that distinguish him today. In Rome he remained a negro; in Egypt a negro; in Hundustan, a negro; in Turkey, a negro; in South America, a negro; in England, a negro, and he IS STILL A NEGRO in these United States of America, and yet there are those, supposedly intelligent, white people, who are endeavoring to elevate him to the standard of the white man.

It is RIDICULOUS to talk about the American negro as "the poor, downtrodden race" and the "duties which we owe him." The truth is that his position as a slave was better than anything he had ever known at home. He was generally well fed, well clothed, well housed, well treated. In exceptional instances he might have had a master who was as cruel as the chieftain of his tribe, but that did not happen often. Occasionally, he may have had as rough a time as he was accustomed to at home, but this was seldom the case.

God Almighty made the skin of the negro black, climate did not do it, as is contended by some people, who

have not studied the question. (Darwin in his writings is inclined to think that West Africa was the original home of the human race, because no doubt, that it was there that the apes came so near being like the men. Apparently, he believed that somewhere in those vast jungles might be found a species of the monkey tribe which would form the connecting link between the gorilla and the lowest type of negro.)

Climate has nothing to do with the negro or his characteristics. The Dutch have dwelt in Africa for hundreds of years, and they are white men now as they were when they first went to the tropics. The Chinaman lives under a sun as hot as that of Africa, and he goes almost naked, as the negro does in Africa; and yet the Chinaman is no more like the wooly haired negro than he was thousands of years ago. That food, rainment and climate do not alter racial characteristics, is proven by the remarkable resemblance of the Eskimo to the natives of China. The former inhabit the frigid zone, live on fish and flesh, without vegetables, and wear the warmest furs obtainable; the latter are vegetarians of the torrid zone, who wear almost nothing but their own skins. There are many more examples, but this should suffice to convince all who are open to conviction. Look at the Abyssinians, they are neighbors to the people of Guinea, but the two types have remained distinct for ages. The Egyptians, the Canaanites, the Phoenicians, were also neighbors to the negro, but the racial types remained radically different, from century to century. What then is the only conclusion? It is simply this: The negro has always been what he is and he will always be what he is, no matter how many books you may rub into his head, and no matter how much door of hope recognition may be given to him.

NATURE created him INFERIOR of the WHITE MAN: and if ever the white man lowers his level to that of the negro—in the vain hope of lifting the negro up—THE CRIME AGAINST CIVILIZATION WILL BE

PUNISHED BY THE MONGRELIZATION AND DEGENERATION OF BOTH RACES.

The salvation and continued advancement of the United Statesof America PIVOTS ON THIS VERY SUBJECT. The negro is not a menace to our future BECAUSE HE IS A NEGRO, but BECAUSE A CERTAIN NUMBER OF MISINFORMED AND MISGUIDED WHITE PEOPLE act upon the idea that the negro is a white man painted black by the cruel caprice of God.

It has even been said that the low characteristics of the negro are the result of slavery. They should know that the assertion has no foundation in fact and is false. Long before any of us were born the colonizations society took the very best of the race and settled them in Liberia, Africa. They gave them the land, they furnished them with implements of labor and with plenty of food. All the Christian governments banded themselves together to protect them in their liberty. They had their own government. Every office from President to Constable was filled by negroes. More than a century has passed, and what have they done? What statesman, historian, poet or inventor have they furnished to the world as a proof of their advancement? NOT ONE. If so, NAME HIM. Their fathers went there, trained laborers, their children are ignorant, idle, vagabonds. Their advancement which they make here is owing to their association with their superiors. Isolated to themselves they would soon go back to barbarism. But says the northern philanthropist these victims of your oppression must be educated. WELL, LET THEM EDUCATE THEM. IT WOULD BE NOTHING BUT RIGHT IF THEY DEVOTED EVERY DOLLAR, FOR WHICH THEIR FOREFATHERS SOLD THEM, TO THE BENEFIT OF THEIR EDUCATION. Don't tell us that they are "victims of oppression", but compare the Southern negro with his progenitors in Africa, even of the royal blood, and he is as much superior as a two hundred and fifty dollar Kentucky mule is to a Mexican Jackass.

"The King of Gnongo ruled a small but very powerful and very populous country, and was the terror of all his neighbors to the north and west by reason of the number and ferocity of the slave raids that started from his dominions, and were almost invariably successful. The whole religion of these people necessitated attacks upon their neighbors, for its basis was constant human sacrifice, and the simple law of self preservation taught the Gnongos, for their own safety; always to keep at hand a goodly supply of the necessary victims. The true history of the place would be a dismal record of ruthless and brutal doings to death of human beings, often apparently for no reason whatever except to satisfy a ghoulish craving for the sight of human blood flowing flesh, or blackening, clotted in nastin in the open, in the town, in street, in square, in courtyard, nay, upon the very household utensils themselves.

"On this, the third day, were to be erected with all the proper ceremonies, the six main uprights of the new Juju house. The reason, or even the simple mythology of these acts, it is hopeless to except; one might as well hope to learn the mythology of monkeys; though, verily, I believe, the daily annals of a collection of the higher quadrumana would be more sane and cleanly and far less blood thirsty than those of the lower bimana.

"But now it was time for things to begin and as etiquette dangerous to evade, constrained all to take part in the ceremonies, fasting, so far as a solid meal was concerned, all real eating and drinking had to be deferred until the proceedings of the date were concluded."

There appeared to be no regular commencement, but, seemingly by a kind of general impulse, drums began to be beaten, horns blown, and trade muskets discharged in the air. Then cows' horns, filled with powder and tamped with clay, were fired off with a thundering report and considerable danger to the neighbors and with the exception of the kind, who practically never appeared in

public, and of his immediate attendants, the whole population of the town flocked to the spot where the ghastly preparations were already well advanced."

"The priest and the warriors and women gathered in a great circle around the pits; the slaves who had carried the victims to the town, bound hand and foot to poles and rolled in cheap calico, at a sign came forward and laid them two and two beside each excavation, one man and one woman to each. Cutting the lashings that secured them to the poles, they took these away. Then one of the priests began a sort of exhortation to the people telling them that the king had graciously given orders for the erection of a new Juju House, which would be for the general benefit; then after animadverting upon the crucifixions of young women that had taken place two days previously for the prevention of famine and drought, he referred to the head cutting of the day before, and declared that the auguries drawn from the positions in which the heads had fallen had been most favorable, that the post of the Juju House were about to be set up in accordance with them, that the heads would be fixed upon the buildings and would bring great luck, and, to prevent and minimize occurrences of such evil omen for the coming of those women who had borne twins in his Majesty's dominions during the year gone by would now be buried alive in the hole in the center of the house, over which, when a proper dwelling place had been provided, a most powerful Juju would preside. He ended by saying that the king had given orders for a great feast to conclude the three days proceedings and that his royal bounty had provided for his people a more than usually liberal dole of rum and palm wine.

"He finished amid the frantic applause of the crowd and more discharging of muskets and banging of drums.

"Now the warriors got into some sort of order in front and began to chant a monotonous song or hymn, to which the women marked a rude time by grunting at regular intervals and slapping their arms, breasts and thighs."

While this hideous anthem was being sung, the executioner and his assistants seized the victims two and two as they lay, male and female, and binding them face to face, pitched each couple into the long holes lying ready excavated beside them. This done he and his daubed and painted assistants, in all their disgusting paraphernalia of charms and bones, began to dance about the pits, rattling hollow calabashes full of small nuts and seeds, partially drowning the groans and screams of agony that preceded from the wretched beings below.

"But now arose the cry of 'Rice-pounders' 'Women, O women, bring your rice-pounders. Let the family be fruitful and the year give many slaves. Women O women, bring your rice-pounders.'"

"These words were shouted and yelled by the warriors, but promptly taken up by the whole crowd, which, wild with excitement, began to stamp and dance with gyratory motion about the spot occupied by the executioner and his assistants.

"Several scores of women had rushed off to the town at the first words, and were now streaming back, each one armed with her rice-pounder, or hard, heavy wood, about three inches in diameter, shod with iron at the lower end. As they came up they were speedily arranged in rows around the pits, and at a given cry from the warriors and the cry of 'Now O women pound the sacred rice to feed the gods' they commenced pounding away with their formidable rammers at the wretched creatures below.

"The piercing shrieks that immediately rent the air soon ceased, and soon, save for a low groan or two, no sound arose from the blood stained mortars except the monotonous beat, beat of the horrid pestles.

"But while the women pounded, the people and executioners yelled and danced till the excitement attained a frantic pitch. Then suddenly closing in, the crowd

seized the great pillars lying on the ground, hoisted them up by main force of arm, and, planting each one in the center of the gory mass below, filled in the loose earth and stone about them.

"Not till the earth was packed hard around the pillars and level with the surface of the surrounding soil did the women cease their ghastly labour. Then they stopped, exhausted, and rolled about, many of them apparently afflicted with a species of epileptic frenzy. (Just such a frenzy as we see the colored women exhibit at their religious camp-meetings and church services in the United States at the present day.)

"At once each became the centre of an admiring circle, for their frenzy was a good omen, a sign that the sacrifice had been accepted with pleasure by the gods, whose spokeswomen they had now become, for the one being, at least.

"After awhile things quieted down; the crowd once more became attentive, for the final ceremony was at hand. As already mentioned, another pit had been excavated in the centre of the pillars, now so firmly erected. Along side the centre hole a dozen more miserable women were dragged. These were the unfortunates who had given birth to twins during the previous year in the king's dominions, and so brought evil upon it. One of the priests gave the people his views upon the subject, views that will hardly bear reproduction in these pages, and then the executioner, carrying an iron bar about two feet long, and followed by his assistants, rolling a short thick log, threw the women down one after another, and deliberately smashing their arms and legs in two places, doubled them up behind them and flung the poor creatures into the hole.

"Not a sound broke the silence, save the screams of the unfortunate victims of this horrible cruelty, and as soon as the last of them had been pitched, shrieking, into

the pit, the earth was filled in over them while they were still alive, and with a wild shout the whole body of spectators rushed in and commenced to stamp it flat with their feet. In a very short time all trace of the excavation had disappeared, and the whole space, inclosed by the uprights, and even several feet beyond them, was tramped smooth and flat and as hard as a threshing floor.

"No one passing could have guessed at the terrible crimes which had been committed, for hardly a splash of blood upon the pillars gave evidence of them.

"With firing of muskets, blowing of horns, and general congratulations and jollity, with praises, yelled and chanted of the goodness of their king and his liberality, the crowd returned to the town, the women to prepare the evening meal and make such festive arrangements as were demanded by the king's orders, the men to talk over the day's celebrations, plan future schemes of blood and rapine, and discuss the next slave-catching expedition all separating later on to secure betimes the royal dole of drink.

"I have described the last day, the night I will leave to the reader's imagination and to its fitting veil of darkness." (J. Cameron Grant's "Ethiopia," 19th Century explorations.) (The reader is also referred to "A Study of Primitive Marriage" by Ernest Crowley, M. A.)

These were the "INNOCENT, CHILD-LIKE PEOPLE" that we are charged with "TEARING FROM THE JUNGLES OF AFRICA" and "REDUCING TO A CONDITION OF SLAVERY".

In Africa the negroes had never been free. They held life and property at the pleasure of cruel, jealous, capricious kings. The shadow of death hung over them, all the time. No member of the tribe knew what moment some look, word or act of his might enrage his chief and cost his life.

IT IS THE BLOOD OF THE DESCENDANTS OF THESE PEOPLE THAT YOU ARE NOW TRYING TO FUSE WITH THE BLOOD OF THE WHITE MAN.

The very earliest records show that our civilization was a very high one, as distinguished from that of the negro, the negro never had any. Our ancestors held a tradition of their Aryan origin and of their emigration from the remote East; they had a democratic system of government; they had a system of laws; they had a system of agriculture; they were navigators of the seas; they were builders of houses; they mined and made use of metals; they had a written language and some literature; they were manufacturers on a small scale; they had a sense of modesty and personal beauty, for they wore shoes and garments of wool and linen, as well as armlets, rings and other ornaments.

The man's house was already his castle and his home a sanctuary.

But the FLOWER OF OUR PRIMITIVE CIVILIZATION was not the valor of the men, nor the stern jealousy with which they guarded the honor of their homes. It was the virtue of the women and the LOVE AND RESPECT that the MEN had FOR THEIR WOMEN and the jealousy with which they loved and GUARDED THEM ALWAYS.

"Whatever may have been said by lecturers or novelists to the contrary, the old-time darkey was the happiest being on the Lord's green earth. He took no thought of the morrow, what he shouuld eat or what he should drink, and not a wave of trouble waved across his lazy heart. He was as prone to idleness as the sparks are to fly upward, and when his master caught him napping in the field, he turned ashy and protested that he was the sickest negro in the world."

"One day an old-time planter, who was a lawyer as well, came home from court and found his darkies lounging about and sleeping under the shade of the trees, and he sternly called them around him, with a thunderstorm on his brow, and harshly said: 'If you lazy, good-for-nothing niggers don't quit lounging and sleeping around here and get up and go to work, I will quit practising law and let you all starve to death.' "

"A lazy old darkey got married one night and gave the preacher a string of fish for tying the knot. In about two months the preacher met him and said: 'Rastus, how are you and Aunt Dinah getting along?' 'Well, boss', Uncle Rastus said, 'I wish to de Lawd I had et dem fish.' "

"Uncle Rastus met Uncle Nicodemus one day and said: 'Nicodemus, do you' 'spose any of the 'postles wuz cullud?' 'I'se not sho' 'bout dat, Rastus,' said Nicodemus, 'but I'se powerful so dat Simon Peter wuz no nigger, 'cause ef he had been, dat rooster neber would a-crowed three times.' "

"Old Uncle Ephraham's wife died, and the old man moaned, and yelled, and shouted, and finally jumped in the grave and wanted to be buried with her, but a big stout darkey jerked him out and held him. The old man looked around in his wrath and said: 'Turn me loose nigger, and go 'way fum here; yo' neber did lak to see me enjoy myse'f.' "

"Uncle Rastus was a preacher, and his master was also a preacher. He couldn't read a word in the book, and was therefore compelled to rely on his master for his texts.

"He shuffled into the mansion one Saturday evening and said:

"Excuse me, marse, but what is you' text gwyne be for tomorrow, ef yo' please sir?"

" 'It is this, Rastus,' the old man said: " 'And the multitudes came unto Him and He healed them of divers diseases.' "

Uncle Rastus thanked his master and bowed himself out, and next morning he rose before his congregation and said:

"My congregashun, I'se got de dangerousest text 'twixt de lids of de Bible. It is dis: 'And de multitudes came unto Him and He healed dem of divers diseases.' Mark de words of de text: 'divers diseases.' Now, according to dish heah text, diseases is in de world—de yellow fever kills hits thousands, and the small pox kills hits tens of thousands. Sometimes dese earthly doctors can cuore de yaller fever ef dey gits to it in time. Sometimes dey can cuore de smallpox, but, in the language of de text, ef yo take de divers, yo's done dead right now. Nobody but de Lord can cuore de divers."

"Every sunrise of summer was greeted by the laughter and songs of the old time darkie of the South as they would scatter in gangs and go forth in every direction to begin the labors of the day, and the music floated back to the mansion to sweeten the morning dreams of the drowsy lords and ladies who still rested on their pillows. The negroes of that day were the most musical and the most humorous race of people who ever lived in the world, and they wove a melody into every task they performed; every leisure hour was filled with their mirth and their merriment, and they were imbued with the spirit of the Christian religion, and were firm believers in the providence of Almighty God. There was not an infidel among those millions of slaves."

It seems strange that our brothers of the north do not know more about the institution of slavery and the negro, than they do.

We have been charged with inventing slavery and alone been guilty of it and for this imaginary reason

much propaganda has been spread among the ignorant of this generation. Go and read your Bible. Don't you know that slavery is coincident with the earliest annals of the human race? Don't you know that Holy Writ expressly sanctions and regulates the system, that Christ never uttered a word against it, and that St. Paul commanded slaves to obey their masters? Don't you know that the system had existed in all ages and among all nations and that it was thrust among the American Colonies by the Old World? Don't you know that the Spaniards brought slavery to this country, long before the Jamestown settlement was made? Don't you know that New England it was that enjoyed the lucrative monopoly of tearing "an innocent, child like people from the jungles of Africa?" Don't you know that from Marblehead, Massachusetts, sailed the first slave ship that ever cleared from an American port? Rhode Island kept more than a hundred such vessels busy and from New York the famous slave ship "Wanderer" put to sea and a Southern lawyer libeled the ship and put a stop to the piratical traffic. It was a Southern statesman who kept slavery out of the great Northwest and when the Committee, in the Convention of 1787, reported in favor or closing the slave trade in 1800, New England voted down the proposition and made the date 1808. Virginia voted to put an end to slavery in 1800; Massachusetts voted to prolong it to 1808. So did New Hampshire and Connecticut. These gentlemen made good of the interval between 1787 and 1808 by selling to the South and the West Indies, a million blacks, whom they "tore" from the jungles, and "chained," scourged and threw into the hold of their vessels.

Teach your children the facts and cease maligning the South.

New England practiced Indian Slavery, negro slavery and white slavery, from the very beginning, and she never gave it up until she found a cheaper, better way of exploiting human labor.

I am not the least bit ashamed of the fact that the South owned slaves: if we had treated them with the brutality that northern corporations inflict upon white slaves under the wage system, I would be ashamed. "Five dollars a week and a gentleman friend," was something unknown to our philosophy.

You must learn about the real negro, in the mass, and remember that the brain cavity of negro skulls found in mumies thousands of years old, is "the same inferior product of nature" as it is now. Once an Indian, always an Indian, once a Chinaman, always a Chinaman, once a white man always a white man and once a negro always a negro. God Almighty so ordained it and those stupid people who advocate mongrelization can not reverse God's Ordinance. Education cannot do it. How can education alter the characteristics of a race? Answer that question? How can you by education make a white man out of a negro or a Chinaman? Are you so ignorant that you think sending him to a college will bring about the change? Is it not a fact that racial characteristics are inherited but that culture dies with the individual, so that you can educate a negro and when he dies any culture that he may have acquired through education dies when he dies, but his RACIAL characteristics are transmitted to his children. Is that statement not true?

We people of the South know the negro, and the negro knows that the southern white man is the best friend he has. We like him in his place, and there HE MUST STAY. Fools to the contrary notwithstanding. We people of the South are determined to safeguard our race—REMEMBER THAT. If there ever was a time when the WHITE PEOPLE OF AMERICA should follow the example of the South, it is NOW.

It was a mistake to bestow suffrage upon a race unprepared to intelligently exercise it. The ballot and the office were not and are not now essential to the negro's

happiness and prosperity. All political privileges should have been and should now be withheld. This should be a white man's government,—to the exclusion of brown men, red men and black men. Open the door of hope to him, but teach him that this does not mean a vote to sell or some political office that puts him above white people or a place in politics that is degrading to the white man.

Who will deny that social equality will follow where political equality leads? Social intercourse between blacks and white must ever be prevented so that the door to amalgamation will be forever closed.

We cannot have political equality, without having social equality. We cannot have social equality, without having intermixture of the two races. DOES ANY TRUE CAUCASIAN WANT THAT?

The South stands for the dominance, and the racial purity of the white race, it has ever so stood and will always so stand. Our civilization is the product of centuries of evolution, centuries of toil, centuries of bloody struggle. It can be preserved and perpetuated by those, only, whose ancestors achieved it. The negro does not understand it, does not appreciate it, and does not know how to maintain it. The more he is mixed up with it, the greater the danger that it will degenerate. What has the negro ever done, said or written? Has any radiant thought ever been born in his wooly head? What does he know about Systems of legislation? No idea of a Paradise was ever conceived by him. His whole philosophy has been bestial and IS NOW. All that he has ever been, is now or ever will be is a weak imitator of the white man. If left alone the worship of God would soon give way to heathenism, inhuman rites and sacrifices, the church bell would give way to the voodoo drum and we would have another Liberia or a San Domingo on our hands. And yet there are some stupid people who call themselves WHITE MEN who preach and practice social equality.

We of the South give to the negro, to the fullest extent, the absolute rights of a man-life, liberty, the acquisition and enjoyment of property, free speech, free press and freedom of conscience. That is ALL THAT HE IS ENTITLED TO.

The electoral franchise and the right to hold office are not a part of the law of nature. The franchise is a political privilege, which organized society gives, or withholds, at its discretion. It is not bestowed upon young white men, however competent, until an arbitrary age-limit is reached. It is not allowed to the citizens of our National Capitol. For a long time, it was withheld from our mothers, sisters, wives and daughters. It is not allowed to the soldiers of the United States Army. And yet, we extend the most ignorant, venal and criminal negro the electoral franchise. *Is it right?*

The South has squandered hundreds of thousands of dollars since the Civil War educating the blacks, but in most instances the schooling does the children no good. The average negro has no true conception of religion, of civic responsibility, of loyalty to the marriage vow, of principle of any kind.

"A negro girl was called to the telephone and her end of the conversation was overheard, as follows:

"Yes, dis is Miss Jones speakin."

"What, will I marry you?"

"Yes; what am de name of the gentleman speaking?"

A negro girl went to her mistress and told her that she was going to leave her and get married.

"Well," said the mistress, "I'm sorry to lose you; but you have been a good servant. I owe you a month's wages, and here's another month's pay as a wedding present."

"Lady," said the girl, "dere's a favor ah'd like to ask you. Would you min' taking care of dis here money for me fo' a while?"

"No, I don't mind," said the lady, "but if youre going to get married, won't you need all your money?"

"No mam," said the girl, "Does you think ah'd trust myself wid all dat money wid a strange nigger?"

The negro is a mere child of impulse. Anybody can lead him anywhere by playing upon his credulity, his ignorance, his superstition, his sensual appetites. The mass of the race are in a lower condition to-day—in health, in morals, in physical well being, in racial purity and strength—than they were in the days of slavery.

You cannot judge the NEGRO RACE by a FEW negroes like Booker Washington, DuBois, Moton and a FEW others. Even though a Zulu type of the pure blooded negro should give proof of exceptional capacity,—what does that prove for the whole negro race? The Zulu type is rare; the low Gunea type ABOUNDS. The moral and mental gulf that separates Booker Washington and a few others is about as deep and wide as the Atlantic Ocean. The negroes with a suggestion of intellect are usually negroes only in name—mongrels in whose veins flow the blood of SOME DEPRAVED CAUCASIAN. The pure blood blacks who have exhibited intellectual and moral qualities, to any great extent, superior to those of the monkey, are few and far between. And yet the pure-blood Ethip is generally a much better and safer member of society than the "yaller nigger," who appears to inherit the vices of both races and the virtues of neither.

I am in favor of education, but I'm not in favor, or ever will be, of taxing the white man to educate negro children. You can go on with your foolery, Mr. Politician and Mr. Philanthropist, insisting upon a high grade

of education for the negro, whether he is fit for it or not. Give him a contempt for all manual labor. Then close every office of profit to him. Deny him your clerkships; shut the doors of your professions to him and you have confronted yourself with a SERIOUS situation. Or, open them all up to him, with his contempt for labor and his ideas of social equality and you have confronted yourself with another serious situation. However, we people of the South are perfectly willing for our brethren who do not agree with us to take care of the so called Afro-American, and we of the South will be glad to have those who only have sense enough to fear God and obey the laws of the land.

By the sacred memories of the mighty past, in the name of every hero martyr that fought and died to create this Christian civilization, as trustees of the glorious legacy of Caucasian ideals and achievements, as defenders of the inheritance of our children's children, we people of the South will safeguard our race and our institutions from the infusion of negro blood and the degrading effects of negro standards.

If the white people of the North, East and West will study the question and learn the facts they will free themselves from this IMPENDING DANGER.

Let anybody come South and investigate. Let them investigate the question of venereal diseases. The negro women are simply rotten with syphilis and from them it reaches forth its leprous hand to drag down men, women and children of their own race. The physical condition of the younger negroes is deteriorating; the increase of crime and vagrancy among them has for a long number of years been on the increase AND AMONG THOSE WHO HAVE BEEN EDUCATED. Come South and study the question and you will find a chapter of horrors—for our present and our future.

Speaking for myself alone, I am sorry that the African kings sold off the surplus of their subjects and that

they were brought to America, but from their standpoint it was the best thing that could have happened to them. Left in their native home they might have been cooked and eaten by hungry friends, "offered up as sacrifices" to placate offended "spirits", killed in battle by neighboring savages, or buried alive to keep company in the grave with some member of the royal family, or starved miserably in some season of famine. Left in his native country he never would have heard of God; never would have heard of Christian heaven; never would have known what it is to read, write, wear "store clothes", and to undress in the presence of white ladies in a Pullman sleeping car; never would have felt the joys of being electioneered of voting, of preaching, of passing the hat around, of sitting at a shoe-blacking stand and reading the morning paper,—"seegar" in mouth—while a little white boy kneels down to polish his number twelves; never would have known what it is to be called "Mister", and "Doctor" and "Professor" and "Bishop" or to be town councillor, Judge, U. S. Consul or Congressman from the State of Illinois like DePriest.

Had he been left alone in Africa, the negro would not have known anything about Federal patronage, philanthropic donations, etc. NEVER WOULD HAVE SEEN HIS CHILDREN EDUCATED AT THE EXPENSE OF WHITE MEN WHOSE OWN CHILDREN ARE IN THE COTTON FIELD AND COTTON MILL. He could not have attended any funerals, in whose enjoyment there are no fears of being buried alive as company to the deceased. Hot suppers, beginning with a wild frolic and winding up with gun play and razors in the air. Revivals running by the month, and climaxing in riotous "'Comin' thro'" Secret Societies, where "colored gentlemen" instruct colored audiences in the gentle art of MAKING THEMSELVES INTOLERABLE TO white people; Free Lectures and MUCH PROPAGANDA TO INSTILL THE SOCIAL EQUALITY IDEA INTO THEIR HEADS and that Hannibal was a nigger, Cleopatra a negress and Sappho, a "merlatter."

We people of the south will keep out from our section those people who are undertaking to throw a stick of dynamite into the combustable negro, negroid and other mongrels. There will be no collectivism FREE LOVE, SOCIAL AND POLITICAL EQUALITY and a fraternity which ignores the difference that God has made between the races, and which forgets the causes which have carried lost nations to their doom.

THE UNWRITTEN LAW.

Much has been said and written about the unwritten law of the South. I have heard it said many, many times while a resident of New York City that "no jury of the South is ever going to convict a man for defending his home and protecting its sanctity." I believe that statement to be true. So universal does the obligation to guard the sacredness of the home relation extend, that the discharge of it under improper invasion has ingrafted into our system of protective means the institution of "the unwritten law" which while it finds no warrant or sanction in legal codes is nevertheless an essential part of the system. Nowhere perhaps in the world, certainly not in the United States, is this more strikingly true than in the South, and the freedom with which the unwritten law is regarded here is continually bringing us under the fire of those who are wont to consider Southern people below the standards that are supposed to regulate other communities.

In this, like in any other primal trait, the people of the South are libelously misunderstood. They have exalted ideals of social conduct and they exercise those ideals to the profoundest measure of duty and respect. Indeed, their infraction of restraining rules and their apparent contempt for the laws too often proceeds from an excess of reverence for the things they cherish. Woman is a fetish of devotion and care in the estimate of the men of the South. The home is their castle of sacred firesides and inviolate thrones. None but house-

hold gods can assimulate the piety the Southerner feels for the God of Heaven. With this superlative estimate of homage is implied the jealousy with which it is bestowed, and the manifestation of it drives Southern action to the extremity of conduct under occasion of need or provocation. From it proceeds many of the things by which the South is condemned in the judgment of her slanderous critics. The South does not love lynching as an inhuman sport, but sees in it a grim and a speedy form of retribution for sins which the laws do not always, and with promptness punish. Lynching is murder, to be sure, and generally of infamous, barbarous form, but it also originates in murder and of a nature that pulls down a temple bulwarked and hedged in the everlasting terms of the "unwritten law." It is an awful truth to proclaim that lynchings in respect to a specific order of crime, rape, etc., will continue in the South so long as Southern men adhere to beliefs that the law is slow and undertake to do under the written code what is too often overdone in the unwritten one. And this because UNSCRUPULOUS lawyers by raising technical points, (even though the evidence proves the defendant guilty) saddles the state with long and tedious trials and affording them an opportunity to pad their pocket books and turning the offenders loose upon the land. There should be no such thing as mob law, neither should there be lawyers who pervert justice by the use of technicalities and turn loose upon the land some guilty criminal under the evidence and a broad interpretation of the law. I make the bold statement that mob law is DUE CHIEFLY TO LAWYERS OF A CERTAIN TYPE, to the very class loudest in its condemnation of the South. I do not refer to the honorable lawyer but to, the SHYSTER. An honorable lawyer would scorn to accept a fee from the blood-stained hand of a murderer or rapist, and then seek, by the use of technicalities of the law to acquit them. There are others who will accept employment under any flag and strike foul blows to win his fight. It is this class of lawyer that is today bringing

the legal profession into disrepute and prostituting the fair and impartial administration of justice. He will employ all arts to mislead the Court and jury to shield his client. Under the evidence the defendant might be guilty before God and yet the SHYSTER lawyer puffs himself up and denounces the jury who convicted him as "contemptable cowards." Then when a similar crime is committed, I have known shyster lawyers of this same stripe to inject themselves into a case, without employment, and in violation of the law of Alabama, as follows:

> "Any attorney appearing for a person without being employed, must, on conviction, be fined not less than five hundred dollars, and shall be incompetent to practice in any court in this state."

When these things happen, it naturally arouses the indignation of the people, and sometimes, they do what the law would have speedily done but for the SHYSTER interlopers, who could ONLY BE APPEARING FOR MONEY OR TO STIR UP STRIFE AND DISCORD, at the instigation of the International Labor Defense or some other such lawless organization. When things like this happen, don't blame the people, but blame the SHYSTER lawyers and the lawless organizations who employ them, for unlawfully injecting themselves into a case in which they had no moral or legal right to appear, and thus, by their own act and conduct forced some of the people to do what the law would have done but for these interlopers, who MUST HAVE BEEN sent to Alabama by organizations like the International Labor Defense, composed no doubt, of a lot of half breeds, negroes, negro-petters, negro lovers and anarchists, imbued with the social-equality rot and the very foolish idea that negroes should sit in the jury box with WHITE PEOPLE, in violation of our custom to select only as jurors "good men and true" and the punishment decree followed as swiftly as in the days of ancient Israel.

A man accused of crime was then tried before a jury of "his peers", or men who were more than his equal,

just as is done here in Alabama, and the day will never come in this state or the South when negroes will be permitted to sit on our juries. Negroes must and shall always be tried by juries of their "peers," outside interference to the contrary notwithstanding.

The Southern white man is the best friend the negro HAS ever had, HAS NOW or WILL EVER HAVE so long as he behaves himself and obeys the laws of the land, You, Mr. Socialist, Mr. Anarchist, Mr. Philanthropist, Mr. Communist, Mr. Social Equality Advocate, ARE HIS ENEMIES.

It seems strange to me, that whenever a black fiend is lynched in the South for his hellish crime, the negro leaders and their Northern sympathizers never waste a tear upon the WHITE WOMAN who has been overtaken by a fate *worse than death.*

Thus the negro race identifies itself with the negro rapist, and "race prejudice" results.

IF A FEW BLACK RAPISTS WERE LYNCHED BY THE BLACKS—feelings would change.

Whenever we are *defied* by outsiders to enforce our laws upon a member of the negro race we become indignant, and then there is no telling WHAT WILL HAPPEN. "Race prejudice" becomes the inevitable consequence of race prejudice: that is to say, the negroes, by their drawing of the race line in favor of a negro criminal, provokes the white race to draw it AGAINST THEM.

"If they frown at the mirror, it frowns back at them."

We Southerners are merely human and we always resent any scurrilous crusade against us.

All of the recent, phenominal and utterly unprecedented action by a lot of outsiders to save a lot of negro

criminals, on the ground of their being negroes, has, or did, maybe, create a little prejudice against those of the negro race and their stupid friends who had chosen to identify themselves with the worse members of the negro race.

This prejudice will grow, if the provocation grows. It will die out, if the fuel ceases to be heaped on.

The negro race and their Northern sympathizers will do themselves and their posterity lasting harm, if they persist in recent methods here in Alabama.

Unreasoning abuse of the State of Alabama is the unwisest course that the Northern friends of the negro race can pursue.

I have never been, am not now and never will be an advocate of mobs, but, when a lot of outside negroes and white people send lawyers into our state who set themselves up insolently and lawlessly, to defeat the law and cheat Justice, I believe then, that within certain limitations, the people who authorize court executions retain the power, themselves, to put down crime.

Within those limitations, all peoples enforce Lynch law.

Why does the law give you the right to expel the trespasser, with just such force as you find necessary? And to kill a man, to prevent him from stealing your horse, or burglarizing your house? Or to anticipate and slay the assailant who manifestly means to attempt your life?

It is because the law is too slow to save you, and you must save yourself.

In like manner, the law may be too slow and uncertain to save a menaced community, because of outside lawyers and the unscrupulous methods employed by them, then that community must exercise its inherent right to defend itself.

THE INTERNATIONAL LABOR DEFENSE AND ITS METHODS ARE DESPISED here in Alabama. You did your utmost to arouse a deep hatred of the negro, which never before existed. You sowed dragons teeth between white man and negro. By your instigation misinformed or slanderous editors have published tirades of abuse against the State of Alabama and the South. You have done your utmost to light the fires of intense sectional and race prejudice. You have tried to blow the breath of life into the Monster of Race Hatred. You have made a mistake and you are still doing so.

We regard you and your teachings among the negroes in the South as we would an epidemic disease and we propose to quarantine against you—if we can.

To be a crime, an act must be prohibited and made punishable by law, and it must be so, at the time it is committed, and at the time it is punished. This prohibition is either by the common law or by statute.

Many acts are prohibited and punished by common law, which does not rest for its authority upon any express legislative enactment, but upon usage or custom. Or it may be punished by the statute law. Unless prohibition can be found in one or the other, no act whatever, *however atrocious*, is a crime.

Murder, rape and robbery are most grievous crimes by the common law, and were punished by death, but they would not be crimes at all if the legislature should abolish the common law, as was done in several states, and inadvertently fail to enact a statute covering such acts.

In Ohio, the common law was abolished, in so far as it determines what acts are crimes, and the legislature undertook to cover the whole field by statute. It neglected, however, to provide for the punishment of a man who should have carnal knowledge of a girl UNDER TEN years of age with her consent, and when such an

act was committed in that state, the Court held and had to hold that it was not a crime, and could not be punished. I cite the case of Smith vs. State, 12 Ohio St. 466, 80 American Decisions 355. And see Mitchell vs. State, 42 Ohio St. 383, Estes vs. Carter, 10 Iowa 400.

As already stated, I am not an advocate of Lynch law, but, I have red blood in my veins, and I am of the opinion that if that child had been living in the South her seducer would not have been permitted to run at large. HE WOULD EITHER HAVE BEEN SHOT LIKE A DOG OR LYNCHED. And in that event, in the opinion of some of our critics *we would be infinitely worse than the brutal seducer of that child.* Just as they have said that those who executed a couple of black beasts for having forcibly debauched a white woman and then killed her, are infinitely worse than the fiends they put out of the world. In other words, it is more "contemptible" to string up a negro in the face of heaven than it is to pounce upon an unprotected woman, defile her and then kill her.

Those men believed that when such desperate criminals are caught and their guilt established beyond any question that the proper thing to do is to crack their necks with the least possible delay, instead of saddling themselves with the expense of long and tedious trials and affording the unemployed learned lawyers from New York an opportunity to pervert justice and turn the offenders loose upon the land.

Again I say that there should be no such thing as mob law, but it would be the part of wisdom for the two lawyers from New York and who, in the opinion of the writer, caused the killing of those two black brutes, without any delay, to inquire. WHAT BROUGHT THEM TO ALABAMA? Answer that question, WHO SENT THEM TO ALABAMA? Answer that question. WHAT DID THEY COME TO ALABAMA TO ACCOMPLISH? Answer that question.

When lawyers begin to berate mob-violence, to brand a whole State and a whole community with the stigma of Cain and consign them to the "log heap of hell" it were well to ask them if they ever shielded criminals from the sword of Justice, thereby not only provoking but making necessary the very deeds they condemn. And if they cannot return a negative answer, they should be advised to poultice their IMPUDENCE. The people of this state are neither "contemptible," "villanous" nor "cowardly" nor are our juries and courts guilty of "judicial murder."

The public is seldom agreed as to what it does want, but is quick to determine what it does not want—and it does not want SHYSTER LAWYERS to come into their state unemployed to interfere with the administration of Justice in our Courts and it does NOT WANT A RAPE-FIEND or assassin to live one minute longer than necessary to determine his guilt and put him in the electric chair. You New York lawyers who came to Alabama seem to entertain the mistaken opinion that THE PEOPLE WERE MADE FOR THE CRIMINAL AND THE CRIMINAL FOR THE LAWYER, on the principle that every bug must have smaller bugs to bite. You have fallen into the bad habit of worshipping "due process of law" because it yields fat fees from The International Labor Defense, forgetful that it is no wise worthy of adulation unless it yields also protection to the people.

I make this statement again that the lynching of the two negroes in Alabama, recently, and with which the public is familiar, was due to those two lawyers from New York, and that mob law is due chiefly to lawyers of their kind. Yes, mobs are beyond all question bad things to have in a community but as a rule they harm no man unless his guilt be established beyond the peradventure of a doubt. With the mob it is simply a question of identity and evidence. There are no delays, no loopholes in their law, no technicalities and continuances, no red tape and no fat lawyers' fees. We have mob law because we have lawlessness and we have lawlessness

because we have too many criminal shielding lawyers. Punishment, to have repressive effect upon the criminal class and satisfy the public sense of justice, must follow sure and swift upon the commission of a crime. An eye for an eye, a tooth for a tooth, and a life for a life, is not only the law of Moses, but it is a statute deep-graven on the heart of humanity by the burin of the Almighty. When one commits a dreadful crime, the public conscience demands that he speedily die the death. And when this mandate is not executed, uprisings of the people and mob violence may be expected.

This "unwritten law" question is a subject that has several sides. It has been said that "human laws may regulate human nature but they cannot control nature's whirlwinds."

Anger in some cases I believe is capable of producing "a condition of mental irresponsibility" during which one cannot be held accountable by the Courts.

Hence law in its declared portions has decreed no adequate punishment for the violation of the home. When a despoiler weans away from her husband that love which is the foundation of the marriage relation, the "unwritten law" of human nature excuses the husband who avenges himself by homicide. There is no question but that such law is an "unwritten law" of the Southern people, but whether it should be or not is a very perplexing question.

Now take the case of those two lawyers from New York concerning whom much has appeared in the press with reference to their "hasty retreat" from the State of Alabama, recently, and already referred to. Well, the public is clearly injured by acts corrupting or obstructing the administration of public justice, and therefore the common law punishes as a misdemeanor any wilful and corrupt act having this effect or tendency. At common law, any act which in itself amounts to a dis-

turbance of the public peace, or which has a direct tendency to cause a breach of the public peace is a misdemeanor and because of the tendency to cause breaches of the peace, it punishes various acts of malicious mischief, libel, etc. The principle is not limited to specific offenses, but covers any other cases in which the public peace is disturbed. Our law making body evidently having in mind the thought that the appearance of unemployed lawyers in our Courts for the defense of criminals could have no good intentions but to the contrary would so appear for the purpose of disturbing the public peace by retarding the administration of our laws, made it a misdemeanor for such lawyers to appear.

The appearance of those lawyers was a nuisance to the community in which they appeared and in order to prevent the spread of disorder, occasioned thereby, the people in good faith and for the public safety proceeded to abate said nuisance by causing said lawyers to "withdraw their presence" and beat a hasty retreat back to New York and in and about the abating of said nuisance they only used such means as are usually employed and resorted to and approved by the populace, might be such a custom as would come within the law. Since they took into consideration reasonable care and regard for the safety of others. Those who caused the abatement of said nuisance by causing said lawyers to make said hasty retreat would hardly be guilty of an indictable offense. Would they?

Is it not your understanding of the law that an act which would otherwise be a crime may be excused if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided, and which, if they had followed, would have inflicted upon them, or upon others whom they were bound to protect, inevitable and irreparable evil; that no more was done than was reasonably necessary for that purpose; and that the evil inflicted by it was not disproportionate to the evil avoided.

Lord Mansfield in the case of Rex vs. Stratton, said:

> "Whenever necessity forces a man to do an illegal act it justifies him, because no man can be guilty of a crime without the will and intention of his mind."

Speaking for myself alone, I would like to see the Court room procedure in the entire country remied. A trial in the Court room should be made more of a judicial examination by the judge and jury and less of prize fight between the lawyers. THERE ARE TOO MANY SHYSTER LAWYERS injected into the legal profession. Few greater men have ever lived that REALLY TRUE LAWYERS. Few meaner men have ever lived than the false ones. You feel the need of a disinfectant when you approach him. He looks bad and he is bad. He is abroad in the land. The impudence of Satan is in his face and the mainspring of his existence is "boodle." Principles are, to him, things to use, trade on and desert.

Truth, honor, patriotism are so many stage habits, which he may or may not assume, and put off as the occasion may require. HE FORGETS THAT THE LAW SEEKS THE TRUTH. He does not want justice done simply because it is justice. I was speaking of the SHYSTER who unfortunately infects our profession not the TRUE LAWYER. There is NO GRANDER profession than that of the law.

What grander man ever lived than the great Roman lawyer whom Nero commanded to justify that tyrant's murder of his mother. But rather than stain his hands with the ghastly work he drew his mantle about him and went to his death. The heroes who led France from Feudalism were lawyers. Lawyers were the apostles of freedom in England. Daniel O'Connell, the great Irish lawyer, did more, during this century; to give us popular rights and the way to enforce them than any other man. He gave us the science of agitation, the peaceable marshaling of public opinion to change customs, policies and

laws; to him we owe the demonstration of the profound truth that reforms are not granted merely because they are right, but they are granted when it is no longer possible to refuse them. The signal fires of the Revolution were lit by lawers; the Declaration of Independence was written by a lawyer, so was the Constitution; Thomas Jefferson was a lawyer, and the man to whose doctrines of equality the people are now being led; our great President Franklin D. Roosevelt, is a lawyer. I could go on and on. I glory in the great opportunities that the true lawyer has to do good.

I never yet faced a jury where life, liberty and property were involved and wrong was threatened that I did not feel my breast swell—proud of the splendid privilege of being the champion of the right. Never such a thrill enters my veins as when by some just verdict I can send back to the old home, safe now for all time, the family who love it most, and to whom every feature of the landscape is festooned with tender memories, or give back to some drooping wife—weeping bitterly and fearfully among her little ones shadowed by orphanage—the missing light, without which home would always be dark.

But of all MEAN CREATURES, deliver us from the SHYSTER lawyer who perverts truth, FERMENTS DISCORD, THINKS, ONLY OF HIS FEE and who tampers with witnesses and who would bribe jurors.

The lawyer who knowingly USES FALSE TESTIMONY, knowingly misleads the judge, knowingly takes unjust advantage of the other side, has, in my humble judgment, done an unprofessional thing and made himself a party to the crime.

Some of these days I pray that our profession may be able to rid itself of the SHYSTER LAWYER and that we may have in our courts and in our regulations less technicality and more of the spirit of justice.

When SHYSTER LAWYERS associate themselves with an organization like the International Labor Defense, who threaten the people of our State, our Courts, our Governor and the Juries with letters and telegrams in an effort to terrorize, WHITHER ARE WE DRIFTING? When lawyers become parties to the "Vendeta" in an effort to usurp the orderly procedure of the law, it it time, then, to remember, the elemental principles of jurisprudence and make use of the exception to the general rule, towit:

> "There are cases where the law, by reason of its imperfection, or the slowness of procedure, cannot do to the citizen that immediate justice which the situation demands. In such instances the citizen is justified in taking the matter into his own hands."

WE will not permit ANY SHYSTER LAWYERS TO COME INTO OUR STATE and traduce its fair name, brand our jurors as being "ignorant, illiterate, jackasses" and our people "semi-barbarous", "aflame with blood lust and race hatred," "bent on lawlessness", and deserving of another desolation of invading armies.

Speaking for myself alone, it is my deliberate opinion that a recurrence of such conduct will bring about the invoking of the exception to the general rule of the law above referred to.

This is not a threat BUT JUST GOOD ADVICE.

Never before have we had such outside influences brought to bear upon us in our enforcement of law; we have tried rich men and poor men, white men and negroes, and we have put many a man to death. Why are all of these recent trials of negroes made an exception? Why were they singled out for almost a national crusade against the State of Alabama?

WHAT IS TO BECOME OF LAW AND ORDER, IN ANY STATE, WHEN OUTSIDERS CLAIM TO RIGHT TO DICTATE IT?

When and where have any of our people interfered with the people of any other state in the administration of their laws? NEVER.

It is safe to say that no state in the Union, and no independent kingdom of the world, was ever before subjected to such an indignity. It is on a small scale, but it is a gross indignity, nevertheless.

Austria demanded of Servia the right to send her judges to try the Servian assassin of the Archduke Ferdinand, and Servia's refusal precipitated the European war. Arguing from example, The International Labor Defense and other enemies of the South believe that Servia should have granted Austria's demand.

CONCLUSION

Fair minded people of the North: Shall we never outgrow the mental warps, caused by abolition rant and rhapsody? Will "Uncle Tom's Cabin" pursue us, to the remotest fastness? Is there no hope that the North will ever cease to view us, through the lenses of 1860? In the voice of the North, is there to be, forever more, the refrain, "I am holier than thou?" Is the South always to be what Galilee was to the Jew? Are these self-righteous old croakers to ALWAYS poison the minds of Northern youth, filling them with the repellant picture of an imaginary South?

Seen through the glasses of Northern writers, New England mole hills swell into mountains, while Southern mountains sink to the level of the plain. In most Northern histories, the South appears backward, unprogressive, the tolerated black sheep of the Union and these books are teaching the children of today that our ances-

tors were rebels and traitors to the contrary they should teach them that it is to the eternal honor of the South that her ideal government triumphed over New England's attempt at democracy. Long before a Pilgrim had landed, fallen upon his knee, and then upon the Aborigines, our ancestors had planted, at Jamestown, the Tree of Life of American Democracy. Manhood suffrage, legislation by representatives, HOME RULE and trial by jury were all in full vigor, on the James, at a time when the Pilgrims and the Puritans were endeavoring to demonstrate that wisdom and power were intended, from before the foundation of the world, to be the monopoly of sour-faced bigots.

While Massachusetts restricted the vote to church members and made little distinction between a common thief, and a wicked husband who kissed his wife on Sunday, the broad minded Virginians were laying those republican foundations, upon which Bacon stood and fought the petty tyrant who represented the King.

Before the much lauded "Mayflower Compact" was signed at sea, the Jamestown representative government was in full operation; and even against the fleet of Cromwell, the Old Dominion stood firmly for Home Rule.

To the Republic, then, the South furnished its basic principles; principles which it can never depart from, without ceasing to be a Republic. John Fiske says, indeed, that North Carolina was the cradle of pure democracy.

Certain it is, that on her soil was shed the first Revolutionary blood; and at the battle of Almance, the "Spirit of '76" first really came into militant life.

It has become the fashion to say that James Otis was the John the Baptist of Independence, and that Massachusetts took the leadership of the Colonial Revolt. On the contrary, the definant eloquence of Otis softened into

the commonplace of "obedience," and the legislature of Massachusetts voted, "We must submit."

It was in the South that the word "obedience" was stricken from the lexicon; and the legislature voted "we must resist."

It was from the South, that the clarion peal rang out, "We must fight."

It was in Virginia that the first armed movement against the royal forces was made.

The first suggestion for a Congress of all the Colonies and for the military confederacy, came from the South.

It was North Carolina that made the first Declaration of Independence. It was South Carolina that established the first organization, as a separate state.

To Virginia is due the first legislative instructions to her delegates in Congress, that all the colonies declare their independence.

In the War of Independence, all we did for the Spirit of '76 was to furnish the flaming tongue (Patrick Henry); the inspired pen (Thomas Jefferson), and the unconquerable sword (George Washington); and it was John Laurens, the South Carolinian who sped to France and got the money and the ships which put the finishing touches to Washington's work at Yorktown.

In Washington's home, the project of a stronger Union was first discussed, and it was Madison, who was the Father of the Constitution under which we live. It was Virginia that pledged her credit for the United States when the United States had no credit of their own.

These are all ancient facts but some of our Northern traducers do not seem to know anything about them, therefore, their attention should be called to the fact of just who Southern people are.

It would require a large volume to tell you all about the South, therefore, I can only give you a few historical facts.

As yet, our principles rest, and will ever rest, upon the ante-bellum Republic. The "House of Virginia" was long in power and it ruled honestly and well.

It is to the eternal honor of the South that we have looked the negro problem squarely in the face, and treated it in our own way. We mean to give the black man his natural rights but no political and social equality.

God never intended the negro to rule the Caucasian, and we of the South are DETERMINED that he shall have nothing to do with the making of our laws or the conduct of our government.

Against the jeers and the taunts and the howls of the outside world, we have stood immovable for White Supremacy and Racial purity. To a greater degree than anywhere else in the Union, we have maintained the predominance of the original stock. No type of woman has ever replaced in our affections and our reverence the Mother and the wife of the South. No type of man has dimmed for us the splendor of the manliness of the Gentleman of the South.

Whilst labor is the strength of a country, its civilization and refinement are in exact proportion to the love and respect entertained for woman.

It is easy and natural for any man to love the young and beautiful of the sex. But when beauty is gone, the eyes become dim and the cheeks furrowed with age and care and toil in their labors for mankind. IT IS THEN that the Anglo-Saxon race IN GENERAL and we of the South in particular, show our SUPERIORITY OVER THE REST OF MANKIND by the veneration and re-

spect we have towards them *because they are women.* WE HONOR OURSELVES BY HONORING THEM, for they are the conservators of all the morality, religion and even the civilization of the race.

No man can justly charge that the South is either too narrowly exclusive or unduly suspicious. She WELCOMES all who come in good faith and with HONEST PURPOSES to cast their lot with hers. But there are elements which in years past poured into other parts of the country which she does not deem desirable, and will, at least, never endeavor to attract, because she regards them as a menace to her moral welfare and her well regulated social order.

The South has laid close to heart the caution of Washington, conceived and uttered in the most critical hour of his immortal struggles for the establishment of independence, "Put none but Americans on guard." The term American as the South applies it, includes all who cherish those principles and aims which entitles them to the fullest fellowship with us, who are native here.

We will welcome you to the South and here "the mocking bird warbles his sweetest song and the darkies still sing their old time melodies and hunt possum and the coon. Here the queenly peach flushes with crimson when the sun doth kiss her cheek, and by her side the princely apples glow with deepest red; and here the orange and the magnolia bloom except when blighted by a frost from the North. Here the pear and the plum and the cherry and every kind of berry bend bough and bush like showers of ruby and of pearl. Here the hills are festooned with tankling vines embossed with purple grapes that hang in clusters like a million crystal globes filled with blushing wine, and the bananas with melting pulp of honey, and pineapples within whose purplish cones cool fountains of delicious juices flow. There are cantaloupes yielding luscious meats of salmon hue, and huge watermelons with pulps of deep carnation flowing

with glory-hallelujah. Pomegranates hang like ruddy moons and lemons like golden globes, and sometimes, a "nigger" hangs, away down south in Dixie."

It is believed by the brethren of the North that our people here in the South are not as vigorous as we should be; that we lack the snap and push necessary for the quick and permanent growth and development of our country. But they forget that we can raise three crops of potatoes in our soil in a single season; that our cotton grows without persuasion; that we can fatten our hogs on acorns and pasture our cattle the year around. They forget that our trees yield tons of persimmons per annum, and that the 'possums hang like sugar lumps from the bending limbs of the aforesaid and the same.

They forget that we can labor half the time and rest the other half and live happier than any people on the face of the earth.

I think that if we could get our New York friends to see the point and furnish the money to develop us, we could soon pay the expense of the whole government, feed and clothe the entire United States and have money left to throw at the birds and rest all the time.

Did you ever hear the story of the pilot and his peril? There was once a great overflow of the Mississippi River. In places it was forty miles wide. The faithful pilot stood at his wheel night and day to keep the steamer in the channel and save her from destruction. He stood there at his post until he was exhausted and almost dead from lack of sleep; and finally he called Uncle Ephraham, who was his roustabout, to come and take the wheel. The darkey took it and waited for instructions. "Now Uncle Ephraham," said the pilot, "do you see the North star yonder?" "Yas, suh, I see the No'th star," "Well, keep the nozzle of the boat square to the North star while I sleep a little and there'll be no danger of accident." "All right, boss; I sho' will keep her dar." But when

the old man took his eyes off the North star and looked up again, all stars looked alike to him; and when the pilot woke the boat was away out in the country and Uncle Ephraham was guiding her around rocks and hills and sandbars, and the pilot shouted: "You old fool, didn't I tell you to keep the nozzle of this boat square to the North star?" "Yas, suh, you sho. did, but boss you'se been asleep heep longr'n you think you is. We'se done passed the No'th star two hours ago."

I believe there is manhood enough and virtue enough to keep the keel of the Anglo-Saxon hope and glory in the channel but the fear is in the heart of those who think that we have passed the North star of safety and that though we are gliding smoothly now, God alone knows how soon we will be in rough and turbulent waters.

I hope that you will study the questions I have in a brief way called to your attention and then to know what is your duty to yourself and to your POSTERITY then do what your CONSCIENCE tells you to do, and leave the rest to that God in whose divine economy no true word or work was ever lost.

"In ancient times they had no easy woy of 'striking a light' and making a fire. Yet it happened time and again, that there was no light to be had. The fires had been neglected, everywhere, and the whole nation found itself in darkness. To rekindle the spark was a most tedious and difficult matter; therefore, the ancients, to prevent a recurrence of the calamity, set apart certain individuals whose sole duty it was in life to keep the light burning.

In Rome, the preservation of the fire was given a sacred character; a temple was built for the service and those who were set apart to feed the flame were consecrated as to a religious duty.

Pure young women were chosen as guardian angels of the sacred fire, and if one of these Vestal Virgins lost

her own purity or let the light in the temple go out, the penalty was death.

Within the temple, night and day, winter and summer, year in and year out, the Vestal Virgin watched her sacred flame. Roman eagle might be flying to the uttermost ends of the earth; Roman legions might be camping on the distant Rhine; or chasing Picts and Scots to the Grampian Hills, or forming lines of battle upon the Euphrates—but in the temple at Rome would be found the eternal fire, with the vestals feeding it, night and day.

If the light went out in the house of any Roman, rich or poor, country or town, he was not left in darkness. Straight way he betook himself to the temple and lit his torch at the fire which the Vestals had kept alive.

And all over the broad dominions of Rome there was never a fear of universal darkness, for they knew if one Vestal fell away from duty, another would take her place, and Vestals might come and Vestals go, but the light would shine forever.

Each of us is a temple, within each of us was lit the sacred fire, within each of us are the better angels of our nature, whose eternal vigilance is needed to keep the temple pure and the light trimmed and burning. As it is with the individual, so it is with the nation. The grandeuer of the Republic must always rest upon the nobility of the citizen.

Does the sacred fire burn low within me? Then woe unto me—for I have lessened the Nation's splendor. Has the light gone out of your life? Then woe unto you—for the Nation has lost a part of its glory.

Consecrate the temple; keep pure and perpetual the vestal service; for it is moral death to the individual to neglect the fire; it is moral death to the Nation to lose the light."

Whatever the differences between the North and the South may be in climate, in wealth, in conditions and environments, Caucasians are all ONE PEOPLE, with common hopes and a common DESTINY. I have tried not to give any offense, but only to present the facts in the case as I see them, and whether you agree with me or not, may God bless our people of every section.

APPENDIX

In Atlanta, Ga., Birmingham, Ala., Memphis, Tenn., and New Orleans, La. during the years of 1921-1922, 61 per cent of the known killers and 70 per cent of the killed were negroes, although negroes constituted only about 30 per cent of the population of those four cities. How do you account for that?

"SOUTH MORE MORAL, LAW-ABIDING THAN NORTH" ASSERTS DR. HARPER.

University, Ala., Sept. 10.—(Special)—The South is really more moral and law-abiding than the North, taking everything into consideration, say Dr. Roland M. Harper, statistician residing at University of Alabama.

Dr. Harper has been studying some of the statistics on the subject and declares that people who take fiendish delight in saying that the South has more crime in proportion to population than the North have interpreted statistics incorrectly.

"Crime is essentially a city problem, for in small towns and farming communities where the people all know each other, it would be impossible for anyone to pursue a criminal career, although robberies may be committed by transients and neighbors may occasionally quarrel and kill each other. But in a large city the opportunities for burglars, racketeers, etc., are greater and at the same time it is comparatively easy for a criminal to lose himself in the crowds.

"As Alabama and neighboring states have only about one-fourth of their population urban, as compared with one-half to three-fourths in most of the northeastern states, it is evident that the opportunity for crime is much greater in the North.

"In the last few years the U. S. Department of Justice has been issuing monthly and quarterly reports on crime, based on voluntary returns by police officers in cities of various sizes, now totaling 1,606 and including half the population of the United States. This still leaves the rural districts unaccounted for, but one table in the latest report groups the cities according to size, and shows that most kinds of crime, and especially robbery, burglary, and larceny, are more prevalent in large cities than in the small ones; and this in spite of the fact that the largest city of all, New York, is not among these reporting.

"Another fact commonly disregarded by the South's detractors is that most of our homicides, as well as many of the other crimes, are among the colored population; so that if northern and southern whites were compared, the latter would show up to still better advantage. Dr. J. J. Durrett, former resident of Tuscaloosa and a student at the University, published several years ago a pamphlet showing among other things that in Atlanta, Birmingham, Memphis and New Orleans, in 1921 and 1922 61 per cent of the known killers and 70 per cent of the killed were negroes, although negroes constituted only about 30 per cent of the population of those four cities. A number of the criminals were strangers, never counted as part of the population."

Doesn't it seem strange that when an attempt is made to lynch a negro in New York City by their own people that the New York papers have little or nothing to say

about it. The following account is taken from the Montgomery Advertiser September 11, 1933:

NEW YORK MOB MENACES NEGRO.

Policemen with Revolvers Drawn Stop Lynching By Crowd in Subway.

New York, Sept. 10.—(AP)—Enraged citizens early today captured a burley negro in flight after an attack upon a woman in a west side subway station. Police believed the prisoner to be a marauder who recently has terrorized many in Central Park.

The negro was rescued from late home-goers in the subway by two officers with drawn pistols, when a good-sized mob gathered to shouts of "lynch him", "shoot him." The policemen were booed when they rushed the negro out of the subway.

At the station, the negro gave his name as Alvin Alfred, 25, and gave an address which officers said was fictitious.

Patrolman Peter Conway, who aided in the capture, said Alfred's description "tallied minutely" with that of the Central Park marauder, who has been the object of an intensive manhunt.

Mrs. Bertha Carrol, 32, victim of the assault in the women's restroom of the subway, was taken to a hospital suffering from shock, severe bruises and lacerations.

Mrs. Carrol was carrying a jar of jam when she stepped into the rest-room about 2:30 a.m. Her husband, William, was standing on the platform watching for their train.

She told police a huge negro, stripped to the waist and barefooted, seized her when she entered the rest-room and tore the jar of jam from her hands. She

screamed, she said, and the negro smashed the jar over her head and knocked her down.

Carrol, a huskey butcher, rushed into the rest room where he said the negro was bending over his wife beating her with his fists.

Carrol picked the negro bodily from the floor and hurled him against the wall. As they fought, Mrs. Carrol crawled to the station platform and called to a man who ran for the police.

Eluding Carrol, the negro jumped to the tracks and fled toward the next station with a crowd of men, who had gathered quickly, at his heels. A down-town local train ended the chase at the next station, where the negro was handled roughly by a fast growing crowd.

Officers at this point entered the station and, with drawn pistols, took the negro away.

I hereby certify that I served a copy of this motion with Exhibits thereto, on Hon. Thomas E. Knight, Jr. Attorney General, November 20, 1933,

G. W. CHAMLEE.

JOSEPH R. BRODSKY, called by the State, testified:

I don't know Victor Elwood. I never met him and know nothing about him. The matter of getting these affidavits was discussed in my office in New York. We wanted to find out the state of mind in Morgan County,—what it was, also here in Decatur, and I retained an attorney by the name of David Schriffman, whose affidavit is hereunto annexed. My instructions to Mr. Schriffman were to get as responsible an investigator as possible for him to get and send them into Morgan County

and for them to make inquiry and find out what the people thought about it, whether it was favorable or unfavorable, and regardless of where it hit, or who it hurt. I told him that I wanted the truth and nothing but the truth, and when he got that information to put it in the form of an affidavit and let the investigators swear to it before an officer and send it up to New York, so that I could have the affidavits before me in preparing this motion. The attorney employed by me came here before me. I know none of the persons whose affidavits are annexed to the motion. The attorney is here.

Cross Examination:

That is all I know about the preparation of the affidavits.

DAVID SCHRIFFMAN, a witness for the State, being sworn, testified:

Direct Examination:

I am a resident of the City of New York and practice law in New York. I do not practice in connection with Mr. Brodsky and am not in his office at all. Mr. Brodsky employed me to secure investigators to come into Morgan County to ascertain the sentiment in Morgan County. He called me and asked me to come to his office to see him, I have forgotten the exact date, but it was sometime in July. Mr. Brodsky conferred with me a good while, and he asked me to procure some good investigators, and while not his exact words, asked me to come into the south and secure the proper men to come into Morgan County and inquire into the sentiment in Morgan County relative to the Scottsboro cases. I accepted that employment. I employed Victor Elwood, Jim Jones and John Williams, and I, myself, made an affidavit. They are the ones that have been offered here. Jim

Jones is a resident of Birmingham. For obvious reasons I cannot divulge his address. I don't know where his residence is. The obvious reasons why I couldn't divulge his address are that Jim Jones is a negro, and he told me at the first talk that he was to be had, and I don't believe he told me where he lived. He was sent to me through other people. I don't know whether Jim Jones talked to and interviewed any persons except colored people. I told him to go into Morgan County and ascertain the sentiment of the people in the county. I told him to see as many people as he could, and some white people if he could. I couldn't ascertain if he is a trained investigator. I employed him because he was recommended to me. Victor Elwood resides in Birmingham also. He is white. He resides in Ensley; I don't know exactly where it is. I don't know his occupation. I think as a matter of fact he was out of work at the time. I don't know whether he did or not. He said he could come into Morgan County, and make the investigation. I don't know whether he used any disguise. The first time he reported to me was in July. I don't know the exact date; the date is here on the affidavit. He came back at the end of the trip. He may have been gone on that trip a week. I was at Birmingham, at the Y. M. C. A. there. I think he made four affidavits. I don't know how he obtained the information except as stated in his affidavits. I certainly do not know whether he used the telephone directory or the city directory to obtain addresses from them. I don't know whether or not any of the people that he says that he had conversation with have been dead for a number of years. Another investigator was John Williams who resides in Birmingham, I think on the south side. I paid these people for performing these services. I, myself, employed them. I met them at various places in Birmingham; at no one certain place. I, myself, came into Morgan County and investigated. I drove into Morgan County from Birmingham and drove through it to the north. I stopped at the first gasoline station outside of Morgan County; stopped for some gas, and there

were quite a number hanging around there. I spoke with a number that were there, and introduced the subject, or mentioned the Scottsboro cases, which immediately secured their interest. I would usually go into the question of where the Scottsboro cases would be tried, and one of them would say: "Those Damned niggers got a fair trial up there" and such as that. I didn't ascertain their names. I was going through to Nashville, and then I was coming back. My real purpose was to investigate Morgan County. I stopped four or five hours in Morgan County. I was traveling through very slowly. I went through from the beginning of Morgan County, say Falkville, I believe, I stopped there, and I forget how I got into Danville, but I went through Danville, and then I was in Hartselle, and then I came on to Decatur, and was around Decatur for a little while and then I kept on. There is one name I think that I remember in Nashville. There is a sort of a gin there that also sells gasoline, and I stopped there for gasoline, and I think the name is Lee. I stopped there at least fifteen minutes, and besides Mr. Lee there was some persons inside. He told me in substance the same thing that is set out in my affidavit. I did not represent myself as anything at all. I don't know Jim Jones' occupation, or where he resides at the present time nor Victor Elwood, except that he is at Ensley. He isn't working at the present time, so far as I know. I think he had work at the time, I employed him, but I don't know; he said that he was working for some mill, some steel mill, I don't know where it was. Jim Jones was some five feet, eight or nine inches, clean shaven.

Elwood, I would say, is about five feet, ten inches tall. He is clean shaven.

Charles Williams has dark hair, and is a man of about five feet, eight or nine inches. He has a moustache, I think a small moustache.

I do not know S. J. Hazel. I do not know A. J. Barber. I don't know anybody there to be frank with you. I do not know W. R. Kennedy.

I am still employed by Mr. Brodsky.

The state then introduced in evidence, the following affidavits:

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said State and County, personally appeared J. W. Lynn, who being duly sworn deposes and says that he resides in beat 14 in Morgan County, Alabama, and has resided there for 47 years; that he is acquainted with a great number of persons residing in all beats of Morgan County, Alabama and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants

will be accorded a fair and impartial trial before a fair and impartial jury.

J. W. LYNN,
Affiant.

Subscribed and sworn to before me
this the 20 day of November, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public, in and for said State and County, personally appeared J. E. Weinman, who being duly sworn deposes and says that he resides in beat 10; in Morgan County, Alabama and has resided there for 44 years; that he is acquainted with a great number of persons residing in all beats of Morgan County, Alabama, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is Plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatever. Affiant further states that any feeling which might have existed

against the defendants or their attorneys immediately following the April trial, has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before and fair and impartial jury.

J. E. WEINMAN.

Subscribed and sworn to before me
this the 20 day of November, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said State and County, personally appeared J. W. Sivley who being duly sworn deposes and says that he resides in beat 5 in Morgan County, Alabama, and has resided there for 40 years; that he is acquainted with a great number of persons residing in all beats in Morgan County, Alabama, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with

his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorney immediately following the April trial has long since expired and that the people of Morgan County with whom he talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury.

J. W. SIVLEY.

Subscribed and sworn to before me
this the 20 day of November, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said State and County, personally appeared J. D. L. Burns, who being duly sworn deposes and says that he resided in beat 12 in Morgan County, Alabama, and has resided there for 1 year; that he is acquainted with a great number of persons residing in beats 12 and 1 and all in Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed

a desire that each the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury.

J. D. L. BURNS.

Subscribed and sworn to before me
this the 20 day of November, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, J. M. Minor, a Justice of the Peace in and for said State and County, personally appeared J. D. Atkinson, who being duly sworn, deposes and says that he resides in beat 20, in Morgan County, Alabama, and has resided there for 58 years; that he is acquainted with a great number of persons residing in practically all beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial

or trials he has heard no threats made against the above named defendants, their attorneys or against any one connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Mogran County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury.

J. D. ATKINSON,
Affiant.

Subscribed and sworn to before me
this the 17th day of November, 1933.

J. M. MINOR,
Justice of the Peace,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said State and County, personally appeared Carl H. Gibson who being duly sworn deposes and says that he resides in beat 1 in Morgan County, Alabama, and has resided there for 11 years; that he is acquainted with a great number of persons residing in all beats in Morgan County, Alabama, that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie

Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County, Alabama with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury.

CARL H. GIBSON,
Affiant.

Subscribed and sworn to before me
this the 20 day of Nov., 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a notary public in and for said State and County, personally appeared Lewis C. Brown, who being duly sworn deposes and says that he resides in beat 1 in Morgan County, Alabama, and has resided there for 25 years; that he is acquainted with a great number of persons residing in all beats in

Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright, and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with the defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trials has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury.

LEWIS C. BROWN,
Affiant.

Subscribed and sworn to before me
this the 20 day of Nov., 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said State and County, personally appeared W. V. Davidson, who being duly sworn deposes and says that he resides in beat 1, in Morgan County,

Alabama, and has resided there for 25 years; that he is acquainted with a great number of persons residing in Morgan County, Alabama; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Eugene Williams are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury.

W. V. DAVIDSON,
Affiant.

Subscribed and sworn to before me
this the 20 day of Nov., 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama,
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared L. W. Brown, who being duly sworn deposes and says that he

resides in beat 16, in Morgan County, Alabama, and has resided there for 63 years; that he is acquainted with a great number of persons residing in all over Morgan County, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMER.

L. W. BROWN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared E. H. Peck,

who being duly sworn deposes and says that he resides in beat 1, in Morgan County, Alabama, and has resided there for 30 years; that he is acquainted with a great number of persons residing in every beat in Morgan County, Alabama, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants; their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon the conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. COUNTRY MERCHANT.

E. H. PECK,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama,
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared A. H. Norris, who being duly sworn deposes and says that he resides in beat 2, in Morgan County, Alabama, and has resided there for 42 years; that he is acquainted with a great number of persons residing in every beat in Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMER.

A. H. NORRIS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a notary public in and for said State and County, personally appeared C. G. Lucia, who being duly sw n, deposes and says that he resides in Beat One in Morgan County, Alabama, and has resided there for 20 years; that he is acquainted with a great number of persons residing in Lane's Beat and Beat one beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. MERCHANT AT LANE'S BEAT.

C. G. LUCIA,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Otto Moebes,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared L. B. Norris, who being duly sworn deposes and says that he resides in beat 2 in Morgan County, Alabama, and has resided there for 42 years; that he is acquainted with a great number of persons residing in every beat in Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. COUNTRY MERCHANT.

L. B. NORRIS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared T. A. Sheats, who being duly sworn deposes and says that he resides in Beat 1 in Morgan County Alabama, and has resided there for 26 years; that he is acquainted with a great number of persons residing in practically all of Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. LAND OWNER AND RETIRED MERCHANT.

T. A. SHEATS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared James C. Sims, who being duly sworn deposes and says that he resides in beat 11 in Morgan County, Alabama, and has resided there for ____ years; that he is acquainted with a great number of persons residing in Beat 1 and 11 beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMING.

JAMES P. SIMS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared E. R. Clements, who being duly sworn deposes and says that he resides in Beat 11 in Morgan County, Alabama, and has resided there for 7 years; that he is acquainted with a great number of persons residing in Beats 10, 5, 1, 9, 16, 3, 18, 14, beats and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. DRUGGIST.

E. R. CLEMENTS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared A. G. Emens, who being duly sworn deposes and says that he resides in Beat 11, in Morgan County, Alabama, and has resided there for 31 years; that he is acquainted with a great number of persons residing in 1 and eleven beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trial to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he had discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. MERCHANT.

A. G. EMENS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared Herbert O. Sively, who being duly sworn deposes and says that he resides in beat 11 in Morgan County, Alabama, and has resided there for 13 years; that he is acquainted with a great number of persons residing in Beats 1—11 beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial and that he is of the opinion based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial, in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. HERBERT O. SIVLEY, MERCHANT.

HERBERT O. SIVLEY,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Otto Moebes,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared F. D. Lyle, who being duly sworn, deposes and says that he resides in beat 11 in Morgan County, Alabama, and has resided there for 53 years; that he is acquainted with a great number of persons residing in nearly all beats in Morgan County beats, and through Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. F. D. LILE, POSTMASTER AT TRINITY, ALABAMA.

F. D. LILE,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Otto Moebes,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared R. M. Grantland, who being duly sworn deposes and says that he resides in beat 11, in Morgan County, Alabama, and has resided there for 16 years; that he is acquainted with a great number of persons residing in every beat in Morgan County beats, and throughout Morgan County; that he has talked to numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMING.

R. M. GRANTLAND,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Otto Moebes,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared Erman C. Grantland, who being duly sworn deposes and says that he resides in beat 11 in Morgan County, Alabama, and has resided there for 16 years; that he is acquainted with a great number of persons residing in beat nine beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMER.

ERMAN C. GRANTLAND,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared Rayburn Neville, who being duly sworn deposes and says that he resides in beat 11, in Morgan County, Alabama, and has resided there for life years; that he is acquainted with a great number of persons residing in 11 beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, William Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired, and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. MERCHANT.

RAYBURN NEVILLE,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama,
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared J. R. Brown, who being duly sworn deposes and says that he resides in beat 16 in Morgan County Alabama, and has resided there for 58 years; that he is acquainted with a great number of persons residing in all over Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMER.

J. R. BROWN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared S. J. Woodall, who being duly sworn deposes and says that he resides in beat Lane's in Morgan County, Alabama, and has resided there for 14 years; that he is acquainted with a great number of persons residing in all parts of Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is planitiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. COUNTRY MERCHANT.

S. J. WOODALL,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared L. E. Blankenship, who being duly sworn deposes and says that he resides in beat 9, in Morgan County, Alabama, and has resided there for 39 years; that he is acquainted with a great number of persons residing in all over Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, William Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMER.

L. E. BLANKENSHIP,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared E. A. Poteet, who being duly sworn deposes and says that he resides in beat 9, in Morgan County, Alabama, and has resided there for 11 years; that he is acquainted with a great number of persons residing in all over Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired, and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. FARMER.

E. A. POTEET,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said State and County, personally appeared Lonnie Cain, who being duly sworn deposes and says that he resides in beat 9, in Morgan County, Alabama, and has resided there for 46 years; that he is acquainted with a great number of persons residing in all over Morgan County, beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired, and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. GINNER.

LONNIE CAIN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

OTTO MOEBES,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally J. E. Lee, who being duly sworn deposes and says that he resides in beat 12, in Morgan County, Alabama, and has resided there for 14 years; that he is acquainted with a great number of persons residing in Priceville, Somerville beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow-citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury; that I am a merchant, farmer and also run a public Grist mill and I come in constant contact with people from both of the above named beats.

J. E. LEE,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared Ras Lyle, who being duly sworn deposes and says that he resides in beat 12 in Morgan County, Alabama, and has resided there for 12 years; that he is acquainted with a great number of persons residing in Priceville and Somerville beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright, and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I am a farmer and do general trading and am in constant touch with the general public.

RAS LYLE,
Affiant.

Subscribed and sworn to before me this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared A. M. Dunnaway, who being duly sworn deposes and says that he resides in beat 9, Morgan County, Alabama, and has resided there for 50 years; that he is acquainted with a great number of persons residing in every beat in Morgan County beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff, and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I am a member of the board of Revenue of Morgan County for 5 years and have been in mercantile business for about 30 years and I acquainted with substantially the citizenship of the county having made political campaigns in this county.

A. M. DUNNAWAY,
Affiant.

Subscribed and sworn to before me this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared W. W. Turney, who being duly sworn deposes and says that he resides in beat 9 in Morgan County, Alabama, and has resided there for 15 years; that he is acquainted with a great number of persons residing in Somerville, Ogden Ridge, Centergrove beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trial to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright, and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired, and the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I was a merchant from 1920 until 1932 and during that time and until the present time was in constant touch with the general public.

W. W. TURNEY,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared R. L. Murphy, who being duly sworn, deposes and says that he resides in beat——in Morgan County, Alabama, and has resided there for 53 years; that he is acquainted with a great number of persons residing in Valhermoso Springs, Lacy Springs and Somerville beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff, and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell and Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversations with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I am a merchant at Woodland Mills and have been in business here since 1916 and have been since that time in constant touch with the general public.

R. L. MURPHY,
Affiant.

Subscribed and sworn to before me this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared Owen Chunn, who being duly sworn deposes and says that he resides in beat 8, in Morgan County, Alabama, and has resided there for 40 years; that he is acquainted with a great number of persons residing in Valhermoso, Lacy Springs and Wolf beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff, and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I am a merchant here in this beat and have been for many years and come in daily contact with the general public.

OWEN CHUNN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared E. H. Dean, who being duly sworn, deposes and says that he resides in beat 8, in Morgan County, Alabama, and has resided there for 63 years; that he is acquainted with a great number of persons residing in Valhermoso, Lacey Springs and Wolf beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff, and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I have been in the mercantile business here for about 25 years, and since the above cases have been pending in this county I have been in daily contact with the general public.

E. H. DEAN,
Affiant.

Subscribed and sworn to before me this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared B. H. Garrison, who being duly sworn deposes and says that he resides in Beat 8, Morgan County, Alabama, and has resided there for 35 years; that he is acquainted with a great number of persons residing in Valhermoso, Lacy Springs and Wolf beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. I have served as deputy sheriff in the northeast corner of Morgan County for approximately twenty years.

B. H. GARRISON,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama,
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared J. G. Black, who being duly sworn deposes and says that he resides in Beat 20 in Morgan County, Alabama, and has resided there for 47 years; that he is acquainted with a great number of persons residing in Lacy Springs, Wolf and Valhermoso beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. Affiant further states that he is a farmer and has resided in Lacy Springs for many years and comes in contact with the general public daily.

J. G. BLACK,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared W. T. Oliver, who being duly sworn deposes and says that he resides in Beat 18, in Morgan County, Alabama, and has resided there for 12 years; that he is acquainted with a great number of persons residing in Ryan's Cross Roads and Gum Pond beats, and throughout Morgan County; that he has talked with a number of persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. Affiant further says that he is a merchant and comes in contact with the public daily.

W. T. OLIVER,
Affiant.

Subscribed and sworn to before me this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared J. A. Foreman, who being duly sworn deposes and says that he resides in beat 7, in Morgan County, Alabama, and has resided there for 65 years except 14 years in Decatur; that he is acquainted with a great number of persons residing in Applegrove, Ryan's Cross Roads, Florett, Wolf beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright, and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. Affiant further says that he has served one term as sheriff of Morgan County, one term as County Commissioner and one term as Representative in the Legislature from Morgan County and is reasonably well acquainted with the citizens of this county.

JAMES A. FOREMAN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared E. C. Ryan, who being duly sworn deposes and says that he resides in Beat 7, in Morgan County, Alabama, and has resided there for 41 years; that he is acquainted with a great number of persons residing in Ryan's Cross Roads, Applegrove, Florette beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell and Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. Affiant further states that he is a farmer and has a wide acquaintance in the above named beats, and that he has carried the mail as substitute for about 3 years in this section of the country.

E. C. RYAN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared Adam Shaneyfelt, who being duly sworn deposes and says that he resides in Beat 17, in Morgan County, Alabama, and has resided there for 16 years; that he is acquainted with a great number of persons residing in Eva (Oden Ridge) Falkville, Lawrence's Cool and Rock Creek beats and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats being made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. Affiant further says that he is a merchant in the Oden Ridge Division of Eva Beat, and is reasonably well acquainted with the citizenship of the above named beats.

ADAM SHANEYFELT,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared E. B. Oden, who being duly sworn deposes and says that he resides in Beat 17, in Morgan County, Alabama, and has resided there for 2 years; that he is acquainted with a great number of persons residing in Eva beats and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. That he is a merchant and comes in daily contact with the general public.

E. B. ODEN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared M. M. Hipps, who being duly sworn deposes and says that he resides in Beat 17, in Morgan County, Alabama, and has resided there for 10 years; that he is acquainted with a great number of persons residing in Eva, Gum Pond and Lawrence Cove beat and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. That he is a substitute mail carrier and as such comes in daily contact with the general public.

M. M. HIPPS,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

Roy O. Wyatt,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama,
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared D. W. S. Bean, who being duly sworn deposes and says that he resides in Beat 5, in Morgan County Alabama, and has resided there for 60 years; that he is acquainted with a great number of persons residing in Falkville, Eva, Gum Pond and Lawrence Cove beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the state of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. That he is a practicing dentist and has practiced in this county for about 40 years and that he comes in daily contact with the public generally.

W. S. BEAN,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.
ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared V. O. Clark, who being duly sworn deposes and says that he resides in Beat 5, in Morgan County, Alabama, and has resided there for 30 years; that he is acquainted with a great number of persons residing in Falkville, Lacon, Massey and Eva beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversations with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. That he has been in the banking business since 1916 and has come into contact daily with the general public.

V. O. CLARK,
Affiant.

Subscribed and sworn to before me this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Roy O. Wyatt, a Notary Public in and for said State and County, personally appeared Addie Vest, who being duly sworn deposes and says that he resides in Beat 5, in Morgan County, Alabama, and has resided there for 13 years; that he is acquainted with a great number of persons residing in Falkville, Danville, Massey, Eva and Lacon beats, and throughout Morgan County; that he has talked with numerous persons about the approaching trials to be held in Decatur, Morgan County, Alabama, wherein the State of Alabama is plaintiff and Haywood Patterson, Charlie Weems, Olin Montgomery, Willie Roberson, Ozie Powell, Andy Wright and Clarence Norris are defendants; that in discussing the approaching trial or trials he has heard no threats made against the above named defendants, their attorneys, or against anyone connected with their defense; that all of the persons with whom he has discussed the trial or trials have expressed a desire that the said defendants be given a fair and impartial trial, and that he is of the opinion, based upon his conversation with his fellow citizens, that the above named defendants can secure a fair and impartial trial in Morgan County, Alabama, free from any prejudice whatsoever. Affiant further states that any feeling which might have existed against the defendants or their attorneys immediately following the April trial has long since expired and that the people of Morgan County with whom he has talked are all of the opinion that the defendants will be accorded a fair and impartial trial before a fair and impartial jury. That he has been in the fertilizer, cotton and stock business for 13 years and has come constantly in touch with the general public.

ADDIE VEST,
Affiant.

Subscribed and sworn to before me
this the 16 day of Nov., 1933.

ROY O. WYATT,
Notary Public,
(Seal) Morgan County,
Alabama.

At this point court recessed until 8:30 o'clock A. M., November 23rd, 1933.

DAVID SCHRIFTMAN, recalled:

Re-direct Examination:

With reference to Victor Elwood, Charles Williams, Jim Jones and John Williams, I was present when these affidavits were made. The oath was administered. They held up their hands and swore to them.

W. T. WILLOUGHBY, sworn in behalf of the State, testified:

Direct Examination:

My name is Mr. W. T. Willoughby. I live at 611 Fourth Avenue West. I have lived there about three years. I did not meet one John Williams, that I know of, on the 28th, 29th, 30th or 31st of October or the first of November, this year, 1933. No person representing himself to be John Williams came to see me. I did not on either of the dates mentioned, have a conversation with any person in Morgan County, in substance or to the effect, in which I expressed the opinion or desire that that the defendants in this so-called Scottsboro case should be hung by their necks, or swung from a tree, or killed, or taken out and done away with, or should get their necks broke. I did not have any conversation at all of that character or kind. I did not have any conversation to the effect that the residents of Decatur were of one mind and that no quarter should be shown the Scottsboro defendants when they came up for trial. I did not state that the Scottsboro negroes ought to be strung up together with the jews. I did not make any statement to

the effect that the Jew lawyer had better stay away from Decatur, or it would be a one-way trip for him. I did not make a statement to the effect that Ruby Bates ought to be strung up with the negroes. I have not had any conversation with any person relative to the Scottsboro negroes, so-called, except maybe some one in town would ask me something concerning the case. I haven't had any conversations at all about it, except that kind. Even to those persons, I did not express any such sentiments or opinions as have just been read to me from the affidavit.

I have lived in Morgan County nearly seven years. I shall have been a deputy sheriff in Morgan County seven years next January. I am thoroughly conversant with the sentiment in Morgan County and know people in each beat in the county. I am more or less constantly in contact with people throughout the county. From my contacts with people throughout the county, I have not heard any such expressions coming from any source in the county as would lead me to believe that the defendants, at the present time, cannot have a fair and impartial trial in Morgan County. In my opinion, they can have a fair and impartial trial in Morgan County at this time.

Cross Examination:

I am forty-two years old, and shall have lived here seven years in January. When I speak of a fair and impartial trial, I mean they can get a jury that will go by the weight of the evidence. I have talked to folks about a fair trial. It has been discussed a good deal here in the county. I don't know how often; I wouldn't begin to say. Well, I haven't asked any one if they believed they could get a fair trial.

A. S. BLACKWELL, sworn on behalf of the State, testified:

Direct Examination:

My name is A. S. Blackwell. I do not know Victor Elwood. I live on Route 2, Decatur. I do not know of any other person living on route two, Decatur, by the name of A. S. Blackwell. As far as I know I am the only A. S. Blackwell on that route. I have lived out there all my life.

I did not ever, that I know of, have any conversation with any one by the name of Victor Elwood. I did not ever have a conversation with anybody with reference to the so-called Scottsboro cases in which conversation I said that it was my opinion that the negroes were guilty, and if they were freed that it would cause a lot of trouble. I know a good many people in this county. I know practically all of the people in the community in which I live and am somewhat conversant with the feeling in Decatur. In my opinion these defendants can have a fair and impartial trial in Morgan County.

I am probate clerk in the probate office about ten years. I was clerk of the Circuit Court from 1911 to 1917.

Cross Examination:

I am in Judge Malone's office. I have not talked with any one, any large numbers, as to whether or not the defendants could get a jury that have no opinions about this case. I have made no effort to find out the sentiment as to what jurors would say, or what they would think. I have no idea about the number of people you have talked to about the Scottsboro cases. I have no recollection of stating that, in my opinion, these defendants were guilty. I cannot recall saying that to anybody. I have not said that if they were released they would cause somebody a lot of trouble. I don't know whether it would; I don't think so.

WHEREUPON, the State introduced the following affidavits:

State of Alabama, }
Morgan County, } ss.:

Before me, J. W. Bailey a Justice of the peace in and for said state and county personally appeared C. A. Moore who being duly sworn deposes and says that he is connected with Sam Frank and Moore, a hardware store in Decatur, Morgan County, Alabama, and that he has been informed that counsel for defendant Haywood Patterson have made the allegation that during the progress of the trial of said defendant, the hardware stores in Decatur, Alabama, were completely emptied and sold out of arms and ammunition purchased by white citizens who were preparing for armed attacks. He states that such allegation is wholly untrue and false in so far as the store with which he is connected is concerned, and that during that time the sale of fire arms and ammunition was no more than usual.

(Signed) C. A. MOORE.

Sworn to and subscribed before me
this the 21st day of June, 1933.

J. W. BAILEY,
Justice of Peace.

State of Alabama, }
Morgan County, } ss.:

Before me, Ruby S. Jones, a Notary Public in and for said state and county personally appeared W. E. Sivley, who being duly sworn deposes and says that he is connected with Sivley & Sandlin, a hardware store in Decatur, Morgan County, Alabama, and that he has been informed that counsel for the defendant Haywood Patterson have made the allegation that during the progress of the trial of said defendant, the hardware stores in

Decatur, Alabama were completely emptied and sold out of arms and ammunition purchased by white citizens who were preparing for armed attacks. He states that such allegation is wholly untrue and false in so far as the store with which he is connected is concerned, and that during that time the sale of fire arms and ammunition was no more than usual.

(Signed) W. E. SIVLEY.

Sworn to and subscribed before me
this the 21st day of June, 1933.

RUBY S. JONES,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Annie L. Morris, a notary public in and for said state and county personally appeared John W. Wyker, who being duly sworn deposes and says that he is connected with John D. Wyker & Son, a hardware store in Decatur, Morgan County, Alabama, and that he has been informed that counsel for the defendant Haywood Patterson have made the allegation that during the progress of the trial of said defendant, the hardware stores in Decatur, Alabama, were completely emptied and sold out of arms and ammunition purchased by white citizens who were preparing for armed attacks. He states that such allegation is wholly untrue and false in so far as the store with which he is connected is concerned, and that during that time the sale of fire arms and ammunition was no more than usual.

JNO. D. WYKER.

Sworn to and subscribed before me
this the 21st day of June, 1933.

ANNIE L. MORRIS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Ruby J. Jones, a notary public in and for said county personally appeared C. F. Watterson, who being duly sworn deposes and says that he is connected with Davis Hodges, a hardware store in Decatur, Morgan County, Alabama, and that he has been informed that counsel for defendant Haywood Patterson have made the allegation that during the progress of the trial of said defendant, the hardware stores in Decatur, Alabama were completely emptied and sold out of arms and ammunition purchased by white citizens who were preparing for armed attacks. He states that such allegation is wholly untrue and false in so far as the store with which he is connected is concerned, and that during such time the sale of fire arms and ammunition was no more than usual.

C. F. WATTERSON.

Sworn to and subscribed before me
this the 21st day of June, 1933.

RUBY S. JONES,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said state and county personally appeared Fred S. Robinson who being duly sworn, deposes and says that he was present in the court room when Hon. Wade Wright, Solicitor of the Circuit court of Morgan County, was addressing the jury in the case of the State of Alabama v. Haywood Patterson and that he payed very close attention to said address and that he did not

hear any "amens" or "nos" expressed by the audience showing their approval of the Solicitor's speech. That the audience was very quiet and respectful and that no remarks were made in his presence or within his hearing which might have prejudiced the jury against the defendant, Haywood Patterson.

(Signed) FRED S. ROBINSON.

Sworn to and subscribed before me
this the 21st day of June, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a notary public in and for said state and county, personally appeared Aaron A. Walton who being duly sworn deposes and says that he was present in the court room when Hon. Wade Wright, Solicitor of the Circuit Court of Morgan County, was addressing the jury in the case of the State of Alabama v. Haywood Patterson and that he payed very close attention to said address and that he did not hear any "Amens" or "nos" expressed by the audience showing their approval of the Solicitor's speech. That the audience was very quiet and respectful and that no remarks were made in his presence or within his hearing which might have prejudiced the jury against the defendant, Haywood Patterson.

(Signed) AARON A. WALTON.

Sworn to and subscribed before me
this the 21st day of June, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a notary public in and for said state and county personally appeared Fred Morgan who being duly sworn deposes and says that he was one of the veniremen drawn for the trial of the case of the State of Alabama vs. Haywood Patterson. That while Mr. Leibowitz, counsel for the defendant, was examining some of the other veniremen on their voir dire examination that he did approach the court and stated to him that prospective jurors of Morgan County were not accustomed to the type of examination which counsel was making and desired to have the court or counsel to explain to them what counsel was doing, but that he did not state to the court that counsel for defendant, "had no right to instruct the jury as to the law." He further states that he might have stated that "We in Morgan County have been in the habit of receiving our law from the court", but that said statement, if made, was only for the purpose of explaining his request for information as to the procedure followed by counsel for defendant.

(Signed) FRED MORGAN.

Sworn to and subscribed before me
this the 21st day of June, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
(Seal) Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Mary E. Gargus Meadows, a Notary Public in and for said state and county personally appeared A. W. David, who being duly sworn deposes and says

that he is the Sheriff of Morgan County and has been since January, 1931. That during the course of the trial of Haywood Patterson in April, 1931, he did not hear of a meeting of the Ku Klux Klan in the city of Decatur or in any City of Morgan County and that when informed by counsel for said Haywood Patterson that a rumor that such a meeting was held, he immediately conducted an investigation and was unable to find a single person of Decatur or Morgan County who attended such a meeting or who had heard of such a meeting. Affiant also sthtes that he did not see or hear of any fiery crosses being burned during the progress of the trial held in April, 1933. That he was never called upon to halt any march of an organized mob during the said April trial. Affiant further states that in his official capacity as sheriff of Morgan County he comes in contact with people throughout the entire county and he is of the opinion that the defendant Haywood Patterson, and those jointly indicted with him, can secure a fair and impartial trial in the City of Decatur, Morgan County, Alabama.

(Signed) A. W. DAVIS.

Sworn and subscribed to before me
this the 21st day of November, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Ruby A. Jones, a notary public in and for said state and county personally appeared Mrs. Fred S. Robinson (Allie Mae) who being duly sworn deposes and says that she is a resident of Morgan County, Alabama, and resides on Route 2, Decatur, Alabama, on what is

known as the Somerville Road; that she is acquainted with the people living on route two and that she is the only Mrs. Fred Robinson living on Route 2. She further states that she has never made any statement to any one to the effect that the "Scottsboro boys" or the "Scottsboro niggers" could not get a fair and impartial trial in Morgan County, Alabama, nor has she ever expressed a desire that they be dealt with in any other manner than through legal chanels. Affiant specifically denies having made the statement attributed to her by the affidavits introduced by the defendants in support of their motion for a change of venue. She further states that in her opinion the defendants will be accorded a fair and impartial trial.

(Signed) MRS. FRED S. ROBINSON.

Sworn to and subscribed before me
this the 20th day of November, 1933.

RUBY S. JONES,
Notary Public,
Morgan County,
Alabama.

Mr. Knight: We have, and expect to get them here almost immediately numerous other affidavits of the same import. At this point, I am going to ask the court to do this: It is perfectly apparent that affiants John Williams and Victor Elwood have committed perjury, and I am going to ask your honor to issue at the present time, a bench warrant for John Williams and Victor Elwood, for perjury, and I shall ask the same thing for the other two affiants if it appears that they have committed perjury.

Mr. Brodsky: We want to except—

The Court: You have nothing to except to yet. I am going to overrule his motion, so that you can't be hurt.

Mr. Brodsky: The pertinent thing about this, this matter should have been asked for in private; the fact that the Attorney General has accused witnesses for the defendant of committing perjury, and has made a motion to have a bench warant for their arrest, will go out over the county—

The Court: Yes sir, and I imagine that it will also go out over the county that I have overruled his motion. I have no jrisdiction over these parties; these affidavits seem to have been made outside of this county, and outside of this circuit, and I have declined the motion and overruled it. I wouldn't grant it if they lived here. That is a matter for grand jury investigation.

THEREUPON, the state introduced in evidence the following affidavits:

State of Alabama, }
Morgan County, } ss.:

Before me, the undersigned authority in and for said county in said state personally appeared Wade Wright who being by me first duly sworn deposes and says that he is Solicitor of the 8th Judicial Circuit of Alabama; that he was present before the grand jury of Morgan County at the October Term of Court; that he then and there investigated the alleged killing of James Royal before said Grand Jury; that there were two colored persons who were brought before the said Grand Jury who reside immediately near the scene of the killing who claimed to have seen the killing and saw the deceased and his two assailants just immediately before the killing, to which, together with other details they testified before said Grand Jury; that thereafter on the 7th day of October, 1933, the Grand Jury returned into the circuit of this county an indictment against two colored men who the said two witnesses claimed and testified did the killing, charging them with the murder of James Royal;

that the said two parties named in the indictment have fled from Decatur and have not been arrested.

(Signed) WADE WRIGHT,
Affiant.

Subscribed and sworn to before me
this the 21st day of November, 1933.

MARY E. GARGUS MEADOWS,
Notary Public,
Morgan County,
Alabama.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared John D. Wyker, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) JOHN D. WYKER,
Affiant.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, John W. Wyker, duly sworn, deposes and says that he is the President of the Brown Funeral Company, an Undertaking Establishment doing business in the City of Decatur, Alabama, and that their records show the deaths and interment of the following, on the following dates:

C. E. Meinhart, died on Dec. 24th, 1932.
A. M. Cottrell, died on April 15th, 1933.
J. W. Frahn, died on March 7th, 1930.

(Signed) JNO. W. WYKER.

Sworn to and subscribed before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a notary public in and for said state and county personally appeared E. M. Lee, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one Victor Elwood in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Elwood or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) E. M. LEE,
Affiant.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a notary public in and for said state and county, personally appeared A. L. Jolly, who being duly sworn, deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) A. L. JOLLY.

Sworn and subscribed to before me
this 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public, in and for said state and county, personally appeared G. H. Smith, who being duly sworn deposes and says that to the best of his knowledge and belief he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opin-

ion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) G. H. SMITH,
Affiant.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared W. G. Roberts, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one Victor Elwood in regard to the so-called Scottsboro cases, but if the cases, but if the cases were discussed with Mr. Elwood or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) W. G. ROBERTS,
Affiant.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared E. L. Perryman, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams, or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) E. L. PERRYMAN,
Affiant.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared E. S. Morrow, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial

and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) E. S. MORROW,
Affiant.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared Lawrence B. Frahn, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or with any one else, he expressed the opinion that the defendant should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) LAWRENCE B. FRAHN.

Sworn and subscribed to before me
this the 21st day of November, 1933.

OTTO MOEBES,
Notary Public.

W. V. DAVIDSON, sworn in behalf of the State, testified:

Direct Examination:

I am Mr. W. V. Davidson. I live in the east part of what was known as New Decatur, now the east part of Decatur, on East Grant Street. I know Mr. A. C. Joiner. He was my neighbor. I sold him his home, and he lived two blocks from me on what is known as 12th Avenue; three blocks off Grant Street. He is dead. I attended his funeral. To the best of my recollection he died two or three years ago; I don't remember the exact date. I have lived in Decatur, New Decatur, then Albany, and now Decatur, thirty-five years and upwards. I have filled official positions during that time. I was chief of police over two terms, and was in the police service twelve years; a member of the city council, chairman of the jury commission for a number of years, and several other minor positions.

Throughout that time, at any time, there has not been any man in this town, or Albany, or New Decatur, that I know of, by the name of A. C. Joiner, other than the one you spoke of.

Cross Examination:

I know J. B. Joiner; his son is Vernon. He is a son of A. C. Joiner. I have heard many people speak about this case during the last six months. I have been in this county thirty-five years, I don't exactly remember how many,—that many anyhow. You might term me one of the old settlers. I believe they can get as fair a trial here as anywhere in this country. Naturally I have heard a good many people talk about it and I have discussed it some myself. I might further say, if I am allowed to say it, it is this, I don't believe there ever has been a time that their lives have been in jeopardy from mob violence. I draw my conclusions from having

talked to the people in Morgan County. I haven't heard any threats. As to the outside and joining counties, I am pretty well acquainted outside of this county. I haven't seen a great many people from the surrounding territory. Comparatively few people from outside the county were here at the other trial.

I don't know the distance exactly from Decatur to Scottsboro. I would say that it is in the neighborhood of sixty miles, from sixty to eighty miles.

J. Q. SEWELL, sworn in behalf of the State, testified:

Direct Examination:

My name is J. Q. Sewell. I live at 508 4th Avenue West, Decatur, Alabama. I have lived there about two years. I have lived in Morgan County all my life.

I do not know a G. O. Sewell, that lives at 508 Fourth Avenue West, man or woman.

I am fairly familiar with the people of Morgan County. In my business dealings I come in contact with the people of Morgan County. From the conversations I have had with the people of Morgan County, it is my opinion that these defendants can have a fair and impartial trial in this county. I don't see why a jury of this county shouldn't base their verdict on the evidence and the evidence alone.

Cross Examination:

My name is J. Q. Sewell. The name I was asked about was G. O. Sewell. The difference was in the initials.

Re-direct Examination:

I do not know of ever having any talk with one John Williams or with Mr. Elwood. I never made that state-

ment to either of these gentlemen or any one that I know of, that the so-called Scottsboro negroes should be strung to a tree, should be killed, or taken out and done away with. I want to see them get a fair and impartial trial in Morgan County, Alabama.

Re-cross Examination:

I have been at home regularly in the last few months.

Re-direct Examination:

I do not work regular. I do not stay at home all during the day. I am out trying to find work. What I meant was I haven't been out of town.

T. F. ROBERTS, sworn for the State, testified:

Direct Examination:

My name is T. F. Roberts. I live at 304 Fifth Avenue West. I have lived at that address, I think, about sixteen years. I reckon I have lived in Morgan County 30 or 35 years. I am a railroad man, but I haven't any work right now. I never made a statement to one John Williams that these Scottsboro defendants should be hung by their necks, strung from a tree, killed, or taken out and done away with. If I ever made that statement to any one I don't remember anything of the kind.

I am fairly familiar with the people of Morgan County. In my opinion I think the defendants in the Scottsboro cases can get a fair and impartial trial. My own desire is that they do get a fair and impartial trial.

Cross Examination:

I don't remember making such a statement. I don't think I ever made a statement like that at all.

H. C. KITCHENS, sworn for the State, testified:

Direct Examination:

My name is H. C. Kitchens. I live at 319 Fifth Avenue, West. I never made a statement to Mr. John Williams, or to any one else, to the effect that the Scottsboro defendants should be hung by their necks, strung from a tree, killed or taken out and done away with. I have lived at my present address four years. I have lived in Morgan County all my life. I know a great number of people in Morgan County. In my opinion the Scottsboro defendants can get a fair and impartial trial in Morgan County, Alabama. That is my own desire. I worked for the railroad company until they laid us off. I am not doing anything at the present time. I am a carpenter.

Cross Examination:

I have no telephone at my home. I am at home every night. I am not there all during the daytime. I have heard these Scottsboro cases discussed. I never heard anybody say that thirty cents worth of rope would end it. I never heard any resentment about the expense occasioned to the county on account of these trials. I never heard any one say anything which might mean, in my opinion, that these defendants could not get a fair and impartial trial under the law, or that might be interpreted by me to mean that these defendants could not get a fair and impartial trial. I never heard any unfavorable comments about these defendants. I don't know that I ever heard any expressions of opinion that they were innocent, or whether or not they might be innocent.

J. H. STONE, sworn for the State, testified:

Direct Examination:

My name is J. H. Stone. I live in Decatur, Route 2, Flint. I have lived there since January 5th of this year.

I have lived in Morgan County since '98. I don't know Victor Elwood. I did not, that I know of, make a statement to him or any one to the effect that there wasn't twelve men in Morgan County that would let the Scottsboro defendants go free. I am fairly familiar with the people of Morgan County, and have been for thirty-five years. I know a large number of people in the county. I certainly think that the Scottsboro defendants can get a fair and impartial trial in this county. It is my own opinion that they can be given a fair and impartial trial. I have never expressed the opinion to any one that they be mobbed, taken out and hung by the neck, killed, or anything like that.

Cross Examination:

I never heard anybody else express that opinion that I can recall. I don't believe I did make such a statement and not remember it. I never heard anybody in Morgan County say that short shrift should be made of these defendants. I may have heard some one say that if the evidence showed that they were gulity they should hang. I have not heard any expressions of opinion since the last trial. I never heard anybody discuss this case. The only thing I heard anybody discuss was the statement this lawyer made in New York about the jury. I have read about it and I have heard that discussed. I don't believe I have ever heard any other feature of this case discussed. I never remember discussing any other matter or feature or any other connection with this case, at any place, any time, anything other than the statement of Mr. Leibowitz in New York.

Re-direct Examination:

I did hear that statement of Mr. Leibowitz discussed. I don't believe that any man sitting on the jury would give them anything else but a fair and impartial trial, notwithstanding anything that happened before.

MRS. MARY LEONARD, sworn on behalf of defense, testified:

Direct Examination:

I live in Birmingham. I have been in Decatur since this last Sunday noon. I came up here to see a lady friend of mine. I came at the request of Mr. Schriftman of New York, I believe it was. I became acquainted with Mr. Schriftman through a girl friend of mine I knew there. She told him to come to see me in Birmingham. She gave him my address in Birmingham.

She wrote me a letter, telling me about him, and he came to see me.

I had a friend in Decatur that I came to see. I came down here Sunday at noon. Mr. Schriftman asked me to tell him what people had to say, and I told him I would be glad to do so; he said he wanted to know what it was, no matter whether it was one way or the other, that he would like to know. When I got here I took a taxicab and I asked the man driving the taxicab if they wasn't going to have the Scottsboro cases the next Monday, and he said Monday. I asked him what he thought they ought to do with that case, and he said "If they don't do something pretty soon all of them would have whiskers", and I asked him "Well, what do you think they ought to do with the negroes?" and he said, "I think they ought to take the negroes and the lawyers and the girls all out—" and I think he said "and shot"—I wrote it down, I can't remember everything and I put it down. After I got to my friend's house I tried to remember what he said. Listen, he said, "Leibowitz better not come back here"—that is what he said "or they will all be hung together" and "or Ruby Bates either". His wife said the same thing. She was in the car with us, and he was driving. There was no hesitancy at all about what they said. They told me what they thought about it. I asked my friends when I got there,

Mr. Cagle and Mrs. Cagle, what they thought about it, Grady Cagle. Mr. Powell said "that he didn't see any use in having any trial at all; that he didn't believe in going through a lot of stuff like that; if they were guilty they ought to take them right out and shoot them. Mr. Jim Powell said that—refers to notes—there was a lot of talk about it,—I can't tell you all of it,—that they believed that all ought to be hung or killed or something, that they thought they were guilty. I was talking to a lady, a Mrs. Hass, a minute ago, that was out there, she said "the people here are hot about this;" that she was scared to go to the court room at the last trial; that she was afraid they would lynch them; that they would break in the jail and get them; that the people in Decatur was hot about this. I told her "I am going to tell them about this if they ask me" and she said "All right, tell them". She is sitting out there now. Oh, yes, and she said, "If they are turned loose they will be lynched".

Cross Examination:

My first name is Mary. I am married. My husband's name is Sam. His occupation is merchandise.

Q. With whom does he work?

Mr. Brodsky: We object to that. Overruled. Exception.

A. He is not employed at the present time.

I have lived in Birmingham nearly all my life. I became acquainted with Mr. (Schriftman)—the gentleman over there, through a friend of mine in New York. I had worked up there. I went to work in New York in January and worked until October, I think it was 1929—that is when I think it was. I don't know whether I heard anything about the Scottsboro cases in New York in 1929. I don't know whether there was any or not. I have been in Birmingham since 1929. My friend in New

York has been writing me all along, and she wrote me, that Mr. Schriftman, I believe his name is, was the man she was working for and that he was coming to Birmingham and would come to see me, and when he called to see me, I was glad to see him because she worked for him as stenographer. She did not make mention of the Scottsboro cases. I have been in Birmingham since I came ba from New York.

I did not have any conversation with Mr. Jones, the present City Commissioner, relative to some communistic or red meetings. I never was had up by about my activities in that convention by the police. I never was arrested in my life. They have never called me in to interrogate me. Everybody in Birmingham knows Chief McDuff. I do not know him personally, I do when I see him. Everybody knows Mr. Jones, the City Commissioner, but I do not know him personally. I did not appear before the City Commissioner of Birmingham in an attempt to get a permit to hold a red meeting or communistic meeting in Birmingham.

I do not know John Williams or Charley Williams or Victor Elwood. I know Jim Jones, President of the City Commission. No, sir, I don't know Jim Jones, a colored fellow.

Mr. and Mrs. Grady Cagle live at 1720 Ninth Avenue. I don't know the name of the taxi driver that drove me out there. I did ask if he was Mr. Sims and he said no, and his wife, who was sitting with him, said, "I am his daughter". I asked because I wanted to get them if I needed a taxi. He give me his card,—I have got it here, "Sims Taxi, Mrs. B. O. Sims" and I said "Lady, are you Mrs. Sims?" and she said "No, I am her daughter". They never did give me their names. I did not want specially to be sure and get their taxi. I did not expect to make an extensive investigation. I saw these people that were driving this cab, and these people I was visiting, four of them, there, and numerous other

people I have talked to around the courthouse here, like that lady out there.

Since I was here yesterday and today I have heard one or two people say that it didn't make any difference to them what they did to them. Mrs. Sims herself for instance, I called her cab and Mrs. Sims drove herself, and I asked her what she thought about it, and she said "It don't make much difference to me one way or the other." Mr. Cagle said that he would like to participate in lynching the negroes. I did not in so many words hear it. He said he believed something ought to be done with them. He said the negroes, lawyers, girls and all ought to be taken out of the court house and shot. I beg your pardon, Mr. Powell said that. Mr. Powell lives at 1720 Ninth Avenue East. Mr. Powell runs a woodyard here. Mr. Cagle and he are partners. They live in the same house. Mr. Cagle did not meet Mr. Schriftman. I saw Mr. Schriftman in Birmingham once. I made my report to him as to what I found out yesterday afternoon about six o'clock down at the bus station. Yesterday was Monday, I came in on Sunday. I happened to see him 'cause I was fixing to take the bus to go home. I come in on this Sunday to see Mrs. Cagle. I am not a kin, just a friend. I didn't visit her often. I never visited her before. I never visited her at all at her home. I have been through Decatur. This was the only time I have ever visited in Decatur. That remark that the negroes, girls and lawyers ought to be taken out and shot, was made Sunday night. I had been here then about six hours. I got in about noon. I did not tell Mr. Powell that I knew Mr. Schriftman. I did not tell him that Mr. Schriftman had requested me to come here and make an investigation and tell him what I found. I happened to meet Mr. Schriftman at the bus station because I went down to catch the bus home. I saw Mr. Schriftman here yesterday, and he didn't say anything or talk with me, and I thought, well, I guess he is not interested in anything I have found out. He had asked me before I came to tell him anything I had found out;

he didn't pay much attention to me, and I decided I would go home.

I was in court all day yesterday. I felt like that if what I knew wasn't worth anything, it was all right. He came up to the bus. It was almost time for the bus to come in. I waited there about an hour, I guess. He came up and spoke to me and told me that he had a subpoena there for me. I didn't get out the pencil to make the memorandum while the people were talking. I didn't let them know that I was going to make these memorandums.

Q. You have never had any connection with any communistic or red activities in Birmingham?

Court: She has already said she didn't.

Q. Have you ever asked Mr. Jones of the City Commission or Chief McDuff for a permit to have a meeting at any time?

Mr. Brodsky: We object to that because it has all ready been answered. Overruled. Exception.

Q. Did you ever ask Chief McDuff, or Jones of the City Commission, to give you a permit, or did you participate with any one in appearing before them, either or both, for a permit for any meeting of any other association or organization of any kind? A. Yes, sir.

Q. Now, what was that organization? A. It was no organization at all. There was a lot of people out of work and we wanted to hold a meeting, and they asked some of us if we would go down and ask for permission to have it, and we went down with some other people and asked for permission to hold this meeting, and they said we could have the meeting.

Q. Who else was in that party?

Mr. Brodsky: We object. Sustained.

Q. You went down and asked for permission to have that meeting? A. Yes, sir.

Re-direct Examination:

I think they could get twelve men here that would give them a fair trial,—my opinion about that is no.

Re-cross Examination:

I have talked to more than nine people since I was in Decatur.

Defendants-petitioners rested.

THEREUPON the state introduced in evidence the following affidavits:

State of Alabama,
Morgan County, } ss.:

Before me the undersigned authority in and for said county, personally appeared F. M. Hamilton who being by me first duly sworn deposes and says that he has been a resident of Morgan County practically all his life; that he is 64 years of age, and has lived in Decatur for the last 30 years; that during said time he has served as Justice of the Peace and as Judge of the Inferior Court of Decatur; that he has been in the mercantile business for several years, and has been a traveling salesman for about nine years; that he is acquainted with substantially the entire citizenship of this county; that he has heard many people discuss the Scottsboro cases, and in affiant's opinion, based upon his knowledge of the citizenship of this county, and what he has heard said, the defendant in this case as well as the other accused parties can get a fair and impartial trial.

(Signed) F. M. HAMILTON,
Affiant.

Subscribed and sworn to before
me this Nov. 21, 1933.

J. H. GREEN,
Circuit Clerk.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county personally appeared J. A. Thornhill, who being duly sworn deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) J. A. THORNHILL.

Sworn and subscribed to before me
this the 21 day of Nov., 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared A. F. Harris, who being duly sworn, deposes and says that to the best of his knowledge he has never made any statement to one John Williams in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Williams or any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial and that in

his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) A. F. HARRIS,
Affiant.

Sworn and subscribed to before me
this 21 day of Nov., 1933,

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said state and county, personally appeared S. B. Cross, who being duly sworn deposes and says that to the best of his knowledge and belief he has never made any statement to one Victor Elwood in regard to the so-called Scottsboro cases, but if the cases were discussed with Mr. Elwood or with any one else, he expressed the opinion that the defendants should be accorded a fair and impartial trial. That he has discussed the cases with certain persons, but has always expressed the opinion that the defendants should be accorded a fair and impartial trial, and that in his opinion such a trial would be given the defendant or defendants in Morgan County, Alabama.

(Signed) S. B. CROSS.

Sworn and subscribed to before me
this 21 day of Nov., 1933.

OTTO MOEBES,
Notary Public.

State of Alabama, }
Morgan County, } ss.:

Before me, Otto Moebes, a Notary Public in and for said county and state, this day appeared H. M. Priest, who after being duly sworn deposes and says that he

is the sole owner of Priest Funeral Home, Decatur, Alabama, and that one Fred J. Patterson, who formerly lived at 707 Second Avenue, West, Decatur, Ala., died on March 9th, 1933, and that he was the official undertaker.

(Signed) H. M. PRIEST,
Affiant.

Subscribed and sworn to before me
this the 21st day of Nov., 1933.

OTTO MOZBES,
Notary Public.

MRS. GRADY CAGLE, sworn on behalf of the state, testified:

Direct Examination:

I am Mrs. Grady Cagle. I live in Decatur. I don't know Mrs. Mary Leonard. I just seen her Sunday afternoon. Sunday night she spent at my house. She come to my house Sunday afternoon; she knocked on the door and I went to the door, and says "How is that"? and she says, "Well, I am related to you, I am your husband's cousin". I asked her to come in and have off her hat and she did. She said she would like to spend the night with us, as she wanted to be here tomorrow for the Scottsboro trial, and we told her all right. After supper we was all sitting around the fire, and she said "What do you think about the Scottsboro cases" and I said, for one, "I don't know anything about the Scottsboro trial; I don't even know one of the girls or one of the men." The men folks was sitting there listening to our conversation, and she asked them "What do you think ought to be done with these Scottsboro cases" and they all said "We don't know; that the court would be the one to say." She said that she was here to do everything in her power to get the trial moved from here to Birmingham; that she was satisfied they wouldn't

have a fair trial here. I was with Mrs. Leonard and Mr. Powell all the time they were together. While I was with them Mr. Powell did not make the statement to Mrs. Leonard that they ought to take all of them, the defendants and the women, out and shot, nor anything of that import. She said she doubted if they could get a fair and impartial trial. I had never seen her before she came to my house.

Cross Examination:

She told me she was my cousin. She said she was related to my husband, not to me but to my husband. She and my husband did not talk about how they came to be related. She didn't say anything more to him about it. She did say she knew his sister in Birmingham. That she was acquainted with her. His sister didn't have any children. She was married. She said she hadn't met his sister's husband. There was quite a conversation between my husband and Mrs. Leonard about the sister.

State and defendant both closed.

The court denied the motion in an opinion as follows:

Court's Opinion.

Gentlemen, the application for a change of venue in this case is very lengthy, covering 34 closely typewritten pages. It is somewhat embellished with well rounded sentences, but after you read it to the last analysis, it undertakes to set forth, as the law authorizes, that the defendants in this case cannot have a fair and impartial trial in this county. Under our law, when that is shown to the court from the evidence on the hearing to his reasonable satisfaction it becomes the duty of the court to grant a change of venue. That is the sole question in the case, unless I should determine that the defendants

are entitled to a change of venue. If I should do that, then the next question would be, to what county would the case be transferred. There is no need, as yet, to give consideration to this last proposition, unless I am of the opinion from the evidence that the first proposition is established. Without meaning to be critical, the application is seriously burdened with immaterial statements, and some in exceedingly vigorous language, and a great many of these statements there has been apparently no effort to substantiate except by the bare and bald sworn statement of the defendants in the case. That application sworn to in that manner is entitled to due and fair consideration. At the same time, it becomes my duty to consider the surroundings under which that application was made, or that sworn statement was made by the defendants. There are volumes of allegations set forth in that application and sworn to, that it was impossible for the defendants to know. I can't shut my eyes to that. The burden is on the applicants to set forth and prove the specific acts and declarations on which they base their application for a change of venue. That has been undertaken in this case. There are several affidavits. There are four affidavits by one affiant, Elwood; there are two affidavits by Williams and two affidavits by Jim Jones, and while the other affidavits are important, legally, the chief effort, as I see it, to show the right to a change of venue, so far as the applicants are concerned, must rest on the sworn application, sworn to by the defendants, and the affidavits made by Elwood, Williams and Jones. I have listened to every line of that testimony, and have personally examined each of the affidavits in the testimony. The affidavits of these parties, confessedly strangers here, show an interview with a great many people apparently, and have undertaken to recite in the affidavits what the different parties said, and on what they said, they base their affidavits that there cannot be a fair and impartial trial. Now, as I see the evidence on that, as exhibited by their affidavits, their opinions are based on unsubstantial and

illegal statements. Now the expressions that the parties made, and they seem to have it down, one would say he did not care much about it, but didn't think they could get a fair trial. That is no statement of a fact. No statement by that witness as to why he considered that they could not get a fair trial. These statements, as I say, much of these statements, do not meet the requirements of the law; that is, before an affiant can make a valid, legal affidavit on the subject, he must recite specifically and substantially the facts on which he bases such opinion; otherwise it is of little value; that criticism is also applicable to some of the affidavits from the state, to which, from a legal standpoint, I cannot give any particular legal consideration. There is in the law and the very nature of the case, some conditions in the affidavit for a change of venue, and the ones offered by the state in rebuttal, which must be met. In the very nature of things the rebutting affidavits are based, and must be largely so, on the affiant's knowledge of the people in his community, together with a lack of having heard anything said about it, for instance, all said what he heard, and on that based his opinion. Referring again to the affidavits of Elwood, Williams and Jones, there is evidence in the case, aside from their confessedly legal weakness, evidence undisputed, that shows, or tends to show that the names of some of these parties alleged by the affiant to have been interviewed, and the language they used, were such people as had long since been dead. While the fact that only comparatively a few have been shown to be dead, at the same time, the very fact that they have quoted one of these men that are shown to be dead, strikes at the very vitals of the credence to be given to such an affidavit. It does not necessarily follow that error in some few instances would cast a shadow of doubt on all of the contents of the affidavits; certainly not, if that error was of such a type from which one could reasonably conclude that it was mere error, but when it is shown to the court that it is more than a mere error, then its weakness becomes serious and vital, in my judgment. Now, that is the applicants' side of

the case, as I view it, when you strike out all that is included in the affidavits that is illegal; that does not meet the requirements of the law as to the specific facts on which the opinion is based, if the evidence should stop there, in my judgment, it would be very unsatisfactory. But it doesn't stop there. The state has offered a great number of affidavits; there are so many I can't detail the instances of those I do not consider in legal form. In my judgment there are some there that do not meet and conform to the requirements of the law. But aside from this, the affidavits offered and so far as I am able to see from the evidence in the case entitled to consideration, the state has met overwhelmingly the proof that has been offered by the defendants on this motion. These affidavits are similar, which, ordinarily, is not altogether to be desired. However, the rebuttal is necessarily of such a type that much of it must be the same. They do show the location of the affiants; they show their business; they show their acquaintance in that territory; they give evidence of where they live; the length of time they have been there; the opportunity of forming an opinion of the facts that they state, so I do not feel justified in overriding the voluminous amount of testimony. Now, in the application much is said about troops and the necessity for having troops at Scottsboro, and the necessity for having troops at Decatur. While the trial in Scottsboro in the spring of 1931, I believe at a point I reckon would be within my judicial knowledge, at least 75 miles from this place,—and mark you, the material thing about a change of venue is that it must appear that the defendants cannot get a fair and impartial trial at the time and place of the application. Of course I do not mean to be understood as saying that facts and circumstances occurring months and years ago are not to be considered as evidence on a hearing at this time. To go on, there is not any evidence before me that there was any necessity for troops at Scottsboro, other than the mere fact that they were there. I would be justified in presuming that they were there on the request of the presiding judge,

That being true, I would accept that as an explanation as to why they were there, and also as to the necessity of their being there. It is recited that a change of venue was granted in Jackson County to this county. Of course I know that, or it wouldn't be here. I have no evidence before me as to the necessity for that change or the reason of it, other than the fact that it was granted by one having authority to grant it, and I assume that he acted with propriety and legality. But these things are now come at a different place altogether. It is not shown that any feeling against these defendants that may have developed and existed at Scottsboro has come down to this point. I have no evidence on this point, as I recall it. There is nothing here that shows any connection between these two counties, and of course I judicially know that they are not joined, and that they are a long ways apart. As to troops, I cannot be blind to the present surroundings. I have a right to take that into consideration, and I cannot see anything here now, or anything that has happened since this trial started that would suggest to me in the remotest degree that there is any occasion for troops here. It is alleged that there was a fiery cross here. That might, in some degree, be likely, but there is no evidence absolutely in this case, other than the bald allegation sworn to in the petition, of its existence. On the contrary, the sheriff of the county, who lives here, and we all judicially know this is the county seat of the county; the jail is located here, and his residence is here, and he makes affidavit that there was no complaint, and that he made an investigation and never heard of any such thing. Still there is a good deal said in there about the danger of mobs. Well, as I say, that was made by the defendants who made it at a time when they were confined in the jail in Birmingham, Jefferson county. Of course, I know they have been in jail since they were originally arrested. In the very nature of things they cannot know anything about whether there was a threatened mob here or not. That is in the nature of impossible evidence. The same is true as to the allegations of the petition as

to threatened mobs on the former trial. I have no evidence of that before me, other than what is set forth in the application. The judgment of the judge that tried the case is set forth and referred to here. I don't know what he had before him that caused him to reach that conclusion. I assume that he had sufficient evidence before him to warrant him in making the decision. I have no criticism to make of that decision, but there is nothing before me to show that that feeling, if there was any, has come down to the present date. On the other hand overwhelming conclusions are drawn from the counter affidavits, impels me to the conclusion that no such condition now exists. Some reference has been made to the Community Builder which was an unwise editorial, and unjustifiable, probably. I have no evidence before me that a copy of that paper has ever come into this county; I do not feel justified in supposing that it did, other than the reference to it in the application itself. Well, I reckon that's about enough. It is suggested that it would make everybody happy if the case could be transferred to Birmingham. If the evidence warranted it, nothing would make me so happy as to transfer it, but I have to go on the evidence, and evidence offered in a legal way on the trial, and from this evidence, I am impelled to overrule the motion for change of venue.

Defendant's counsel excepted to the court's ruling denying the motion for change of venue on behalf of all the defendants.

MOTION TO QUASH TRIAL VENIRE.

DEFENDANT, ON NOVEMBER 21, 1933, MOVED TO QUASH THE VENIRE WHICH WAS DRAWN IN THIS CASE ON NOVEMBER 20TH. THE SAID MOTION IS IN WORDS AND FIGURES AS FOLLOWS:

(Caption)

Your petitioner, who is the defendant above named, by his attorneys, moves the Court to quash the venire

of Petit Jurors which was tendered to and served on him and from which said venire it is now proposed to draw the Petit Jury which is to try him on the indictment and indictments in the above entitled Cause, and avers as follows:

1. Your petitioner was heretofore indicted by the Grand Jury of Jackson County on or about March 31. 1931, by individual indictment and by joint indictment, together with eight other defendants, charged with the crime of rape upon a white woman. Thereafter, in April, 1931, your petitioner was tried in the Circuit Court of Jackson County and was found guilty and sentenced to be executed.

2. Thereafter an appeal was taken from said judgment of conviction and sentence of death to the Supreme Court of the State of Alabama and said conviction was affirmed.

3. Thereafter an appeal was taken in the order of affirmance to the Supreme Court of the United States and the judgment of conviction was reversed and a new trial ordered.

4. Thereafter your petitioner and the other defendants indicted together with him moved in the Circuit Court of Jackson County for a change of venue and the case of all the defendants was transferred to the Circuit Court of Morgan County for retrial.

5. Thereafter your petitioner was tried in the Circuit Court of Morgan County and was convicted and sentenced to death. Thereafter your petitioner, by his attorneys, moved for a new trial before the HONORABLE JAMES E. HORTON, the Judge who presided at the trial and said motion was granted and the judgment of conviction and sentence of death set aside. Your petitioner is now

facing trial for the third time on the original indictment found against him.

6. Your petitioner has heretofore pleaded in abatement and moved to quash the indictment and indictments found against him on the ground that Negroes were excluded from the roll of Grand Jurors and from the Grand Jury which found the indictments against him, and have been systematically excluded from service on Grand Juries in Jackson County, as is more fully set forth in said motion and the affidavits attached thereto and the hearings had thereon.

7. Your petitioner is a Negro of the African race.

8. The venire of Petit Jurors from which is, or is to be drawn the Jurors who are to try your defendant on the indictment aforesaid, is void and was drawn and selected in a manner and by methods contrary to law, in that persons of the Negro race, duly qualified under the laws of the State of Alabama to serve as members of the Petit Jury that is about to try your defendant, were excluded from the roll of Petit Jurors of Morgan County from which was drawn the venire of jurors from among whom will be chosen the Petit Jurors who will try your defendant. That all qualified Negro citizens of Morgan County were excluded from the aforesaid roll and panel solely by reason of their race and color, as will appear more particularly hereinafter.

9. That in the year 1932 or 1933, the duly constituted authorities of Morgan County prepared a Jury Roll of male citizens of Morgan County, from which roll the venire and finally the Petit Jury which is to try your petitioner was selected. That said roll above referred to consisted

wholly of white persons and contained the name of no Negro citizen of Morgan County, qualified by law to serve on juries, solely by reason of the fact that all qualified Negroes were arbitrarily excluded from said roll and have been arbitrarily and systematically excluded for many years from the rolls of Petit Jurors, by the authorities designated by law to prepare said roll, solely because of their race and color.

10. Consequently, the venire served in this case, which was selected from the aforesaid roll and the Petit Jury which is or is about to be drawn, contains the name of no Negro citizen qualified by law to serve on aforesaid jury.

11. That at the time when the aforesaid Jury Roll was prepared and the aforesaid venire and jury were drawn there were approximately 46,000 persons residing in Morgan County, of whom approximately 38,000 were white and approximately 8,500 were Negro.

12. That at the time when the aforesaid Jury Roll was prepared and the aforesaid venire and jury were drawn there were approximately 23,000 male citizens of Morgan County, of whom approximately 19,000 were white and approximately 4,250 were Negro.

13. That at the time when the aforesaid Jury Roll was prepared and the aforesaid venire and jury were drawn there were approximately 11,000 male citizens of Morgan County over the age of twenty-one and under the age of sixty-five years who were qualified, under the laws of the State of Alabama, to serve as Petit Jurors in Morgan County. That of this number approximately 9,000 were white and approximately 2,000 were Negro.

14. That at the time when the aforesaid Jury Roll was prepared and the aforesaid venire and Jury were drawn there were approximately 2,000 Negro citizens of Morgan County who were duly qualified to serve as Petit Jurors, and to be enrolled on the aforesaid Jury Roll, and who were and are eligible for such enrollment, and who possess

all of the requirements set forth in the laws of the State of Alabama for service as jurors.

15. That the Code of the State of Albama (1923) Section 8603, relating to qualifications of jurors provides as follows:

> *"Qualifications of persons placed on jury roll and in jury box*—The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, but no person may be selected who is under twenty-one or over sixty-five years of age, or, who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a free holder or householder, his name may be placed on the jury roll and in the jury box."

It is further provided in Section 8606 of the aforesaid Code as follows:

> *"Jury Commission must place name of every qualified person on the jury roll* * * * The jury commission shall see that the name of every person possessing the qualifications prescribed by this chapter to serve as a juror shall be placed on the jury roll and in the jury box."

16. That at the time when the aforesaid Jury Roll was prepared and the aforesaid venire and jury were drawn there were approximately 2,000 Negro citizens in Morgan County, who were male citizens over the age of twenty-one years and under the age of sixty-five years, and who were generally reputed to be honest and intelligent men, and

who were esteemed in the community for their integrity, good character and sound judgment and who were not afflicted with a permanent disease or physical weakness rendering them unfit to discharge the duties of jurors, and who had never been convicted of any offense involving moral turpitude. That of this number there may have been some who could not read English, but who, notwithstanding, possessed all the other aforesaid qualifications and were freeholders or householders of Morgan County.

17. That members of the Negro race duly qualified by the laws of the State of Alabama to serve on Grand and Petit Juries in the State of Alabama and in Morgan County, have been and are systematically, arbitrarily and in violation of law excluded from the jury roll and from serving as jurors, as aforesaid, solely because they are members of the Negro race, that is, by reason of their race and color.

18. That for the last twenty-five years or more the duly constituted authorities of Morgan County having charge of the preparation of the Grand and Petit Jury rolls and the selection of panels of Grand Juries and Petit Juries in Morgan County and of Grand Juries and Petit Juries in Morgan County, and generally of the laws and regulations pertaining to jury service in Morgan County, have systematically, arbitrarily and invariably refused, neglected and omitted to place the names of Negro citizens of Morgan County on aforesaid jury lists, although the said Negro citizens were and are qualified under the laws of the State of Alabama to serve as such jurors and Grand jurors; and said refusal, neglect, omission and exclusion were due solely to the race and color of the aforesaid qualified Negro citizens.

19. Upon information and belief, no Negro has served on any Grand Jury or Petit Jury in Morgan County for more than twenty-five years.

20. That the arbitrary refusal, omission and neglect to place the names of qualified Negroes on said roll and rolls, as hereinabove more fully set forth, were and are to the detriment, prejudice and damage of the defendant and in violation of the Constitution and Laws of the State of Alabama, and his rights thereunder.

21. That the arbitrary refusal, omission and neglect to place the names of qualified Negroes on said roll and rolls, as hereinabove more fully set forth, were and are to the detriment, prejudice and damage of the defendant and in violation of the Laws and Constitution of the United States and the Amendments thereto, and his rights thereunder.

NOTICE is hereby given that the defendant will ask leave of the Court to submit further testimony, both oral and written, in support of the allegations herein contained that may be controverted by the State of Alabama.

WHEREFORE your petitioner prays for an order quashing the jury panel or jury venire served on him as aforesaid and for such other and further relief that may be just and proper in the premises, for all of which no previous application has been made.

Nov. 20, 1933.

(Signed) HAYWOOD PATTERSON,
Defendant,
By G. W. CHAMLEE, Att'y.

G. W. CHAMLEE,
S. S. LEIBOWITZ,
J. R. BRODSKY,
Attorneys.

STATE OF ALABAMA,
COUNTY OF JEFFERSON, } ss.:

HAYWOOD PATTERSON, the defendant and petitioner herein, makes oath that the facts as stated in the foregoing petition and motion to quash are true to the best of his knowledge and belief.

HAYWOOD PATTERSON.

Subscribed and sworn to before me
this 19th day of November, 1933.

F. L. ERWIN,
(Seal) Notary Public.

I hereby certify that I served a copy of this motion to quash the trial panel of jurors in this case as this day served on defendant Haywood Patterson. Nov. 20, 1933.

G. W. CHAMLEE.

EXHIBIT A.

IN THE

CIRCUIT COURT OF MORGAN COUNTY, ALABAMA.

STATE OF ALABAMA against HAYWOOD PATTERSON, Defendant.	No.

ROBERT JAMES makes oath in due form of law that he resides at 31½ W. 20th Street, Chattanooga, Tennessee, and that he formerly lived in the State of Alabama and is acquainted with a large number of citizens in and near Decatur, Alabama, and that he is personally acquainted with J. E. Pickett, W. J. Wilson, Lee Murphy, L. R. Womack, Will Irvine, Jodie Quinn, Rufus Carter, Max Saxton, Will Porter, Nathan Washington, Tom Garth, Robert Smith, R. L. Hunter, Council Irvine, Leeper Crump, Otis Boyd, George D. Draper and each of them, and that they and each of them are Negroes and male citizens of Morgan County, Alabama, and they and each of them are generally reputed to be honest and intelligent men and esteemed in the community for their integrity, good character and sound judgment, and are all male citizens of Morgan County, Alabama, as aforesaid, and over the age of 21 years and on information he says they are under 65 years of age, and on information that neither one of them has ever been convicted of any offense involving moral turpitude and they are all householders, or free holders of Morgan County and can all read the English language and are members of the African race, and on information he says that neither one of them is afflicted with a permanent disease or physical weakness such as to render them or either of them unfit to discharge the duties

of a juror as provided under the laws of the State of Alabama. He further states that he is 38 years old and that no Negro ever sat on a jury in Morgan County to his knowledge, and that he had visited in Decatur and lived there for many years.

.....

Witnessed by

.....

Subscribed and sworn to before me
this day of , 1933.

EXHIBIT B.

IN THE

CIRCUIT COURT OF MORGAN COUNTY, ALABAMA.

STATE OF ALABAMA against HAYWOOD PATTERSON, Defendant.	No.

W. M. GARRETT makes oath in due form of law he resides now at Chattanooga, Tennessee, and formerly lived at Decatur, Alabama, and that he has been a frequent visitor to Decatur, Alabama, during the past recent years, and that he is personally acquainted with Leo Sykes, Jim Sykes, Dr. ..... Darken, Dr. ..... Cashner, Robert Bridgeforth, Robert Watkins, Ben Hays, Monroe Moore, John Smith and Tom Macklin, all free holders or householders and male citizens of the Negro race residing in Morgan County, Alabama, and that each and all of them are generally reputed to be honest and intelligent

men and are esteemed in the community for their integrity, good character and sound judgment and over the age of twenty-one years and on information he says they are under the age of sixty-five years and that neither one of them afflicted with a permanent disease or physical weakness such as would render either one of them unfit to discharge the duties of a juror, and that they can read English and no one of them has ever been convicted of any offense involving moral turpitude.

Affiant further states that all the above named parties are Negroes who live in Morgan County, Alabama, and possesses all of the qualifications prescribed by law for jury duty in Morgan County.

Affiant further states that he is fifty-five years of age and that he never knew or heard of any Negro sitting on a jury in Morgan County in his life. He has known of Negroes sitting on juries in the United States Court at Huntsville, but he has never known or heard of a Negro sitting on any jury in the Circuit Court of Morgan County, Alabama, and he states on information and belief that the names of all qualified Negroes have been left off of the jury roll in Morgan County for many years solely and alone on account of the fact that they were Negroes and for no other reason. This has been a custom that had prevailed in Morgan County, Alabama, for more than thirty years to his knowledge.

Affiant further states that he voted himself in Decatur, Alabama, and that the foregoing named Negroes are qualified to vote in Morgan County and are freeholders or householders in Morgan County.

(Signed) .....

Subscribed and sworn to before me
this day of , 1933.

.....

Mr. Knight: The State denies each and every allegation of motion.

[It was stipulated that the testimony taken on the former trial before Judge Horton to quash the venir be offered in evidence, except that the Court reserved the right to rule upon objections. It was further stipulated that the jury roll is the same now as it was when the former motion was made.]

THE TESTIMONY ON FORMER HEARING ON SIMILAR MOTION WAS OFFERED, AS FOLLOWS:

J. H. GREEN, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is J. H. Green. My official position is Clerk of the Circuit Court of the Eighth Judicial Circuit, Morgan County. I call the names of the jurors on the panel that is drawn. I am present in court during practically all of the time the court is in session. I sit right next to his Honor, the presiding Judge of the Court, where everything that transpires in the court is fully visible. I have been Clerk of the Circuit Court of the Judicial District which I mentioned continuously for four years and a little over. We have three terms a year, I believe, and in addition to these regular terms there were one or two special terms during my occupancy, making something like fourteen terms in all. There are four weeks to a term and about forty jurors a week were called. That makes about 160 jurors called each term, not counting the special jurors. One week each term is capital week, in which about fifty or sixty jurors were called. There were approximately twelve such weeks in all during my occupancy. There were, calculating roughly, about 2500 jurors called. I saw those 2500 jurors when they appeared in court. Not one of them was a colored man. Not one of the 2500 that appeared was a member of the negro race.

Before I was Clerk of the Court, I was first Clerk in the Probate Office for about eleven years. We had jurors in that court on one or two insanity cases for which panels were drawn. Sometimes, but not very often, I visited the regular and special terms of the Circuit Court when it was in session. I have been a resident of Morgan County for about thirty odd years. I don't remember ever seeing any single person of the colored race serve on any jury in Morgan County. The Jury Commissioners for the year 1933 are John W. Tomlinson, J. A. Tidwell and W. J. Brisco, and I believe they were the Jury Commissioners for the year 1932. I have seen them at work, but don't know how they proceeded. I may have looked into the jury roll book, but do not know anything about it. I saw it in the Probate Office some time last year. It is bound; I think it says, "Jury Roll, Morgan County."

Cross Examination by Attorney General Knight:

I do not know how the Jury Commissioners arrive at the list of names they put in the jury box. I just saw them in the room. I did not hear them discussing the qualifications of prospective jurors, nor whether or not they would exclude negroes from the jury. I have never been summoned before a jury commission to pass on the qualifications of jurors.

DR. FRANK SYKES, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

[The Court agreed to take judicial notice of the population of males between the ages of twenty-one and sixty-five in Morgan County, with leave in the defendant to insert the actual public figures in the record at any time.]

I was born in Alabama in 1892 and have been a resident of Morgan County, Alabama, ever since, except for the fifteen years I was off at school. I attended and was grad-

uated from the graded school. After leaving that school I went to Moorehouse, in Atlanta, Georgia, where I took my academic work. I didn't graduate from Moorehouse, but finished my high school work at Howard University, in Washington, D. C. Then I went to the dental school at Howard University and took a dental course there. I also studied academic subjects, history, literature and English. I took a degree of Bachelor of Arts in addition to my professional course. Since 1927 I have practiced my profession of dentistry in the City of Decatur, Morgan County, Alabama.

I was asked by members of the defense counsel to prepare a list of colored citizens of Morgan County. The names of the men whom I am about to call off are male citizens of Morgan County generally reputed to be honest and intelligent men and esteemed in the community for their integrity, good character and sound judgment. All these men are over twenty-one years of age and under sixty-five, none of them are afflicted with any permanent disease or physical weakness which renders them unfit to discharge the duties of jurors. I think I know what the duties of a juror are, and what a juror is expected to do in a law case. He is expected to sit in the box and try out different questions of fact and render a verdict after discussing the evidence with the other jurors and after listening to the Judge on the law. I believe two or three on the list cannot write; they are householders or freeholders. All of these men I am about to mention are negroes.

Q. Are some of the men whose names you have on that list who are able to read, do they fit these qualifications as a voter in Morgan County?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I respectfully except.

Q. Are you yourself a voter of Morgan County? A. Yes, sir.

Q. Were you examined as to your qualifications as a voter before you were permitted to vote?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: We except. The purpose of that question is to show, with reference to the individuals that Dr. Sykes is about to read off who are voters, that those men were examined by the authorities who have the right to give persons permission to vote. I want to show the test to which each of these negroes was subjected before he was permitted to vote—intellectual test. I want to show that these negroes were all examined as to their familiarity with the United States Constitution, and in many instances have not only been required to recite sections of the United States Constitution but have been required to interpret the Constitution.

Attorney General Knight: You make so many arguments you make me change my objection each time.

Mr. Leibowitz: I want to show that the intellectual test that is applied to these negro voters is such that the Court would be constrained to say that if they are voters they possess the intelligence and the judgment which would certainly fit them for the service of jurors in the jury box.

Court: Sustain the objection. In a test of jurors' fitness you can't go into those two questions.

Mr. Leibowitz: I am not seeking to go into that. I am trying to make my point clear, that if a man is intelligent enough to be a voter in this county he is intelligent enough to be a juror.

Court: Sustain the objection. A man might be a voter and past sixty-five years of age.

Mr. Leibowitz: I will show they are under sixty-five.

Court: Sustain the objection.
Mr. Leibowitz: I except.

Q. You will say, though, that some of the names on this list are voters?

Court: Sustain the objection.
Mr. Leibowitz: I except.

Leaving the doctors out, the following names meet the qualifications I have mentioned above: H. L. Murphy, Tom Garth, Walker Lipscomb, W. A. Mills, Hess Thompson, Parker McKelvy, C. B. Irwin, Will Irwin, A. L. Harris, J. J. Sykes, Robert Smith, R. L. Hunter, G. F. Robertson, C. M. Sykes, George Reynolds, Oscar Witaker, H. J. Banks, T. W. McWilliams, A. O. Sheffey, E. E. Jones, R. L. Anderson, F. G. Dinkin, Will Steel, Elias Hatton, W. E. Binford, Mack Sexton, Nathan Washington, Neel Sykes, Sr., T. W. Bridges, Julius Williams, John Love, Will Porter, George Nelson, Henry Brown, Robert Browder, James Johnson, William Frierson, Albert Ruffin, Robert Bridgeforth, W. W. Bough, Henry Jackson, Ed. White, Dan Matthews, Hilliard Tate, Allen Draper, Amos Russell, John Humphrey, Clifton Draper, Will Jennings, Oscar Jackson, Oscar Sharply, Claybourn Sharply, Bud Sharply, Lee Bibb, Allen Davis, Tom Davis, Jeff Robinson, Will Townsend. I have two Will Garths, one at Cedar Lake and one at Decatur. Richard Vaughn, Charlie, Tony, Dave Garth, Elmer Garth, Isom McDaniel, R. C. Smith, E. J. Pryor, William Martin, Jim Skinner, Alex Matthews, Henry Mattison, Billie Baker, Will Montgomery, William Murphy, Leslie Luckett, William Johnson, Will Turner, Aninias McDonald, W. J. Wilson, J. E. Pickett, Robert Fuller, J. I. McGahee, Dilliard Williams, Cal Barnett, Charlie Vaughn, Charlie County, Mathew Macklin, John Perry, Tom White, Robert Dawson, Clarence Poke, J. J. Sykes, Robert Sykes, Tom E. Reedus, Frank Ballentine, Will Garth of Decatur, Will Rogers, Jerry Elliott, Mack Lewis, Leo Sykes, Banks Patterson, Asa Jones, J. N. Martin, Forest Settle, Sam Whitaker,

Scipio Garth, Hill Bolden, Daniel Thomas, J. C. Carpenter, James Lyle, Frank Owens, Albert Donald, T. R. Boalware, W. J. Wood.

Q. Are there many others, in your opinion, many other persons of the colored race, within the confines of Morgan County, who fit these qualifications I have mentioned?

Attorney General Knight: We object.

A. I think so.

Mr. Leibowitz: I think he can state from general observation about how many others.

Attorney General Knight: He may state about one, but he can't state as a whole.

Mr. Leibowitz: I want to show that the list, the number of qualified men, are not restricted to the list the doctor gives; that there are many others in the opinion of the doctor whom he doesn't know personally.

Court: Unless he knows them, I sustain the objection to the question as put.

I have never seen any of these men serve on any jury in Morgan County. To my best knowledge, none of them were ever called for service on juries in this county; all of these men are qualified. I have never seen or heard of a single colored man ever serving on a jury in this county. These men I have mentioned have been residents of this county for a good many years, some from fifty-five to sixty years. To the best of my knowledge, T. R. Boalware is the newest comer. He has been here for eight or more years. Most of these men have been here all of their lives, and none less than five years.

Cross Examination by Attorney General Knight:

Both white and colored live in each of the communities from which these names come.

Q. You got Mr. Leibowitz up that list; could you get me up a list of the white people who have never seen service on a jury—don't you know there are a lot of white people in this county who have never served on a jury?

Mr. Leibowitz: I object to that on the ground it makes no difference whether there are some white people who served or did not serve; the complaint before the Court is whether or not negroes have been systematically excluded from serving on juries.

Court: I will let him ask if there are not some white people who have been excluded.

Mr. Leibowitz: I except.

Q. Don't you know there are white people in this county who possess the qualifications of those on that list, who you have mentioned possess the qualifications who have never served on a jury?

Mr. Leibowitz: I object.

Court: Overrule the objection.

I don't know of any white people in this county who have never served on a jury. All of these people whose names I have mentioned are esteemed and highly regarded, men of sound judgment, and men whom I think capable of passing on human rights and personal liberties. They have the general reputation as being men of good character and sound judgment. I do not know that one man whose name I called on that list is in the penitentiary right now serving sentence. I do not know that another of the negroes on the list was in the Justice of the Peace Court a few days ago charged with bastardy.

I do not know whether or not the Jury Commission of this county considered me for jury service. I do not know whether they considered any of the names I mentioned for jury service. I don't know whether they are in the box, whether they are in the jury box or on the rolls.

Q. You don't know that the Jury Commission just arbitrarily excluded those names, do you?

Mr. Leibowitz: We object as calling for the operation of the Jury Commissioners' minds.

Court: Overrule the objection.

Mr. Leibowitz: I except.

A. I don't know.

I don't know how the Jury Commission selected the names in the box. I don't know whether my color was considered or not.

Re-direct Examination by Hon. Samuel S. Leibowitz:

I am an educated man. I know what arbitrary means. A man acts arbitrarily when he does things without regard to reason or justice.

Q. I will ask you this question, knowing these men whose names you have mentioned and their qualifications, if it turned out in this case that these men were never put on the jury roll, would you then say the actions of the authorities that had the selection of jurors under their power were arbitrary in not putting their names on the jury roll?

Court: Sustain the objection.

Mr. Leibowitz: I took him as an expert and I want to show this by this witness who testified to the names of these men, if the names of these men were not on the jury roll in his opinion the Jury Commission acted arbitrarily. We except.

DR. N. E. CASHIN, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

I am a physician, licensed to practice under the laws of the State of Alabama. I have been a physician twenty-four years. I am a graduate of Howard University Medical School, Howard University, Howard Preparatory Academy and Phillips Exter Academy, New Hampshire. I studied one year at Phillips Exter Academy. I am a married man. Mrs. Cashin is alive. I have no children. I was born in Morgan County and have lived here continuously except for the time I was studying; in all my life in Morgan County. I have never known of a single instance where any colored man of the African race was called to serve as a juror; I have never seen a colored man serve on a jury in any part of the State, nor heard of any in the State Courts; I understand some have been called in the Federal Court. I have seen before the list of names you are handing me. I am intimately familiar with every man whose name is on that list. All of them are male citizens of Morgan County, who are generally reputed to be honest and intelligent men, and who are esteemed in the community for their integrity and good character and sound judgment. I do not know of any of them under twenty-one. They are all men of mature age; two of them may be over sixty-five. None of them are habitual drunkards. One, Leo Sykes, is blind, but there is nothing else about his condition which renders his mentality bad so he cannot think or have good reason. None of these men have ever been convicted of any offense involving moral turpitude that I know of. All are able to read English, except one or two, who are householders.

Q. Are there several men on that list who are voters? A. Yes, sir.

Q. And vote in all the elections, voters that are qualified to vote? A. Yes, sir.

Q. After having passed the test that is required of a voter?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

I can name from the list with full knowledge and without question H. M. Murphy, Tom Garth, Walker Lipscomb, W. A. Mills, Hess Thompson, Parker McKelvy, C. B. Irwin, Will Irwin, A. L. Harris, J. J. Sykes, Robert Smith, R. L. Hunter, G. F. Robinson, C. M. Sykes, George Reynolds, Stanley Basham, Oscar Whitaker, A. J. Banks, T. W. McWilliams, A. O. Sheffey, E. E. Jones, R. L. Anderson, F. G. Dinkins, Will Steel, Lias Hatton, W. E. Binford, Nathan Washington, Neil Sykes, T. W. Bridges, Julius Williams, John Love, Will Porter, George Nelson, Henry Brown, Robert Browder, J. H. Harris, James Johnson, William Frierson, Albert Ruffin, Robert Bridgeforth, W. W. Bough, Henry Jackson, Edmond White, Dan Matthews, Hilliard Tate, Allen Draper, Amos Russell, John Humphrey, Clifton Draper, Wm. Gee, Abe Long, William Craig, William James, Oscar Jackson, Oscar Sharply, Claybourn Sharply, Byrd Sharply, Lee Bibb, Allen Davis, Tom Davis, Jeff Robinson, Will Townsend, Will Garth, Richard Vaughn, Charlie Toney, Dave Garth, Elmer Garth, Phillip Lightfoot, I. Z. Moore, Isom McDaniel, R. C. Smith, E. J. Pryor, William Martin, Jim Skinner, Alex Mathews, Henry Mattison, Billie Baker, Will Montgomery, Charlie Montgomery, William Murphy, Leslie Luckett, William Johnson, Will Terry, Aninias McDonnell, W. J. Wilson, J. E. Pickett, Rev. Womack, Rev. Robert Fuller, Rev. John Watkins, Rev. J. I. McGahee, Rev. W. A. Wilhite, Rev. Dilliard Williams, Rev. Newby, Rev. George Eldridge, Rev. U. G. Draper, John Dillon, Cal Barnett, Charles Vaughn, Charles Conty, Mathew Macklin, John Perry, Tom White, Robert Dawson, Clarence Pope, J. J. Jackson, Robert Jackson, E. Owens, Tommie Reedus, Frank Ballentine, Will Garth, Will Rogers, Jerry Elliott, Mack

Lewis, Banks Patterson, Asa Jones, J. N. Martin, Forest Settle, Sam Whitaker, Scipio Garth, Hill Bolden, Daniel Thomas, J. C. Carpenter, James Lyle, Leo Sykes (blind), Frank Owen, Albert Donald.

Cross Examination by Attorney General Knight:

I do not know how the Jury Commission goes about selecting the jurors; I have an idea. I do not know whether or not the jury commissioners considered those names. I do not know whether they are on the jury roll or not.

H. J. BANKS, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is Hewlett J. Banks. I reside in Decatur in this county. I was born in Morgan County and have lived here all my life. I am fifty-five. I am a city bill poster and have been for twenty-seven years. I had eighth grade schooling. I vote and have been voting fifteen years.

Q. Did you have to pass certain tests to become a voter?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: My point is I want to show this man's mentality, and I want to show what is knowledge is as to the civic and community affairs, and to establish his qualifications, and others' qualifications by his own qualification, as to sound judgment, and as to intelligence, and as to all things going to make up the requirements for a man's service on a jury. He doesn't have to be a voter to be put on a jury, that is true, but if he is a voter and has passed certain tests, I say that is material and should be considered by your Honor in passing on his qualifications as a juror.

Court: Sustain the objection.

Attorney General Knight: My position is this, the law provides what tests a man must get to be a voter. It reposes a discretion in the Registrar, which is appointed by law. The law also provides the qualifications for a juror and it reposes that discretion in the jury commission, so you would be testing the discretion of one body by the action of another body.

Mr. Leibowitz: No, that isn't the point.

Court: Do you want to show the competency of this man?

Mr. Leibowitz: Yes, sir.

Court: I will sustain the objection to the question, I will let you show he is a voter.

Mr. Leibowitz: What I want to show is this, I want to show this man before he became a voter had to know the Constitution of the United States and had to construe the Constitution of the United States.

Attorney General Knight: He testified he was a voter.

Mr. Leibowitz: I want to show what this man had to go through with before they permitted him to become a voter, to show his intelligence and his knowledge.

Court: Sustain the objection.

Mr. Leibowitz: I except.

Q. Are you familiar with the Constitution of the United States? A. Some of it.

Q. The time you were declared a voter were you examined on the Constitution of the United States?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: We except. For the purpose of the record, and not to be captious, I want to put this question.

Q. Were you required by the Registrar at the time you became a voter, or before you became a voter, before you were permitted to vote, to construe and define certain sections of the Constitution of the United States?

Court: Sustain the objection.
Mr. Leibowitz: I except.

Q. Do you read the newspapers? A. I read the newspapers and magazines. I regularly attend church. In my leisure time I talk with my fellowmen about the affairs of the day, the happenings in the nation, the State and the local community. I engage in political affairs and in social relations with my fellowmen. I have discussed matters of education of the children of my race with other people, although never on the school board. In all my life in Morgan County I have never known of one instance, nor has any ever come to my knowledge, of any negro ever serving on a jury.

I do not drink and am not afflicted with any permanent disease or physical weakness which would render me unfit to discharge the duties of a juror. I think I understand that the duties of a juror are to listen to the testimony, listen to the witness and the evidence and pass on questions of fact, and to the instruction of the Court as to the law, and render a fair verdict under those circumstances. I can read and write. I have never been convicted of any offense involving moral turpitude, nor have I ever been convicted of anything. I am a householder, have a family and children. I myself have never been summoned for jury duty at any time, never been called to court. I know of no other negro ever being called to the court in Morgan County to serve on a jury; I never heard of any. I come to court as a spectator every chance I get. I come with frequent regularity to the Circuit Court in this county and look at the proceedings. I have never seen in my life any negroes step up as jurymen. I assisted in supplying this list of names of negroes of Morgan County, with all of whom I am intimately, person-

ally acquainted. Some have lived there all their lives, not one under ten years. I visit and am in contact with many of them, some are members of my church. I know others who know these in the community. All on the list are male citizens of this County, generally reputed to be honest and intelligent men and esteemed in the community for their integrity, good character and sound judgment. None are under twenty-one nor over sixty-five years of age, and none are habitual drunkards nor afflicted with any permanent disease or physical weakness that would render them unfit to discharge the duties of a juror, and none cannot read English nor was ever convicted for any offense involving moral turpitude; those that cannot read English are house holders or free holders. As far as I know these men have never served on a jury nor ever been called to serve on a jury in Morgan County.

Omitting the doctors exempt from jury duty, on the list are Frank Sykes, myself, Rev. E. Mison, A. C. Ruffins, Henry Jackson, H. L. Murphy, E. E. Jones, Rev. Arthur Matthews, Prof. Council Harris, a local teacher; Prof. J. E. Pickett, principal of the Decatur school; Prof. W. J. Wilson, principal of the East Decatur school; Prof. G. W. Bridges, employed by the United States Government here to teach in school how to put up fruit and stuff; H. Swift, Arthur Roberson, Sam Deemer, C. V. Hill, John Chandler, W. L. Swoops, F. K. Vaughn, Bank Patterson, John W. Bates, William Frierson, J. H. Vaughn, Dallas Priest, Rev. Wilson, Charles Brooks, R. L. Anderson, Frank Owen, A. O. Sheffey, Carl Sykes, J. J. Sykes, W. J. Wood, Clarence Pope, Willie Rogers, Rev. L. R. Womack, Percy Johnson, Aron Orr, Clarence Bailey, Neal Sykes, Alonzo Harris, Harry Johnson, James Hill, William Garth, Solomon Young, Will Porter, T. R. Bridges, T. W. McWilliams, W. W. Bough, J. N. Martin, William Gee, A. W. Matthews, Rev. I. W. McGahee, George Reynolds, Rev. Pollard, Rev. W. A. Wilhite, Dan Matthews.

I never asked the Jury Commission of my county not to put me on the jury roll. I never wrote them a letter or communicated with the Jury Commissioners. I never

told them, "I don't want to serve on a jury." If I were drawn I would be willing to serve and do my duty as a citizen. I know some of the men on this other list; I am personally acquainted with I. Z. Moore, Rev. James Hyter, Robert Pates, Otis Johnson, Green Shelby, F. G. Dinkins, Dr. W. H. Sherrard, E. D. Owens, Ed Harris, William Matthews, Edmon White, George Nelson, James Shelby, Council Irwin, Will Irwin, Charlie Vaughn, J. J. Jackson, Henry Mattison. These men have all the qualifications and none of the disabilities outlined before. I never heard of any of these men ever being summoned to appear in court as a juror.

Cross Examination by Attorney General Knight:

I am an average speller, not an expert. I haven't been all around town working on this case; it didn't take me long to get up those names I assisted in getting up. I know them.

Q. Do you know Ben Hayes? A. I do.

Q. Do you know what sort of character he possesses?

Mr. Leibowitz: I object, he hasn't mentioned Ben Hayes.

Attorney General Knight: I expect my cross examination to develop the fact that none of them knew, actually knew, the qualifications of the men they have sworn possessed the qualifications of jurors.

Court: Was Ben Hayes one of them on the list?

Witness: No, sir, one of them on a different list.

Court: Overrule the objection.

Mr. Leibowitz: I except.

I know Ben Hayes; he made a pretty good citizen, as far as I know; he is not violent and mean; I don't know about his intelligence.

Q. Tell me more about Ben Hayes, what is it you are holding back, tell us all about him?

Mr. Leibowitz: I object to that question on the ground this witness, Mr. Banks, has not included Ben Hayes in his list.

Court: If I understand it, Ben Hayes has been testified to as possessing these qualifications?

Mr. Leibowitz: Not by the last two witnesses.

Court: Then it becomes an issue whether or not Ben Hayes has those qualifications, of course, any question which would go to show he had those qualifications——

Mr. Leibowitz: We are not concerned about that man because we specifically struck him from the list and we claim he was put on that list through inadvertence.

Court: I will let you ask him the question.

Q. What about him?

Mr. Leibowitz: If there is going to be any more snickering and laughing from some young gentlemen, I am going to ask you to clear the court room. This is no burlesque show or Roman holiday for the crowd.

Court: There is no use being excited over any matter that way. Gentlemen, I don't want any laughing, and I am not going to have it, the Court will not permit it and I don't want to hear any in the court room, any laughing or anything of that kind.

Attorney General Knight: I am glad you mentioned that to the crowd, I am tired of hearing of Roman holidays.

I suppose Ben Hayes is at home; I don't know whether he has ever been to the penitentiary or not, I haven't heard of him being there. Ben Hayes has been a good man as

far as I know, I don't know anything wrong with Ben Hayes.

Mylam Eady wasn't on the list; he has been a good citizen as long as he has been in Decatur. I believe he is esteemed in the community as a man of sound judgment. He lives on West Lafayette Street, in this town. I see him about every day. He has never been sent to the penitentiary nor been convicted of any offense that I know of.

More than one Garth lives at Cedar Lake; Will Garth, who lives there, I think is all right, as far as I know of him. I don't know if he is not now in the penitentiary. I don't know much about him; he wasn't on the list I prepared. I took some part in politics, and in church matters. I never sat on a Federal Jury. My father has, but I haven't.

Q. Do you know Mr. Tidwell? A. Which one?

Q. The Jury Commissioner? A. Yes, sir.

Q. Do you know Mr. Tomlinson, another Jury Commissioner? A. I know Mr. Tidwell, a Jury Commissioner; I don't think I know Mr. Tomlinson, and that one. I did not see them make up the jury roll of this county.

Q. Do you know of any white people in this county, who have never sat on the jury, who possess as good qualifications as those names?

Mr. Leibowitz: I object because it is incompetent, irrelevant and immaterial, the fact the Jury Commissioners may have wrongfully and arbitrarily excluded white people from that list is no excuse to exclude the negro because of his race or color.

Court: Overrule the objection.

Mr. Leibowitz: I except.

A. I don't know what white people sat on the jury.

I never saw the jury roll and I do not know whether my name or any of the names on the list I submitted is on that roll or not.

Q. Do you know whether or not Mr. Tidwell, Mr. Brisco and Mr. Tomlinson, the Jury Commissioners of this County considered those very names you submitted here?

Mr. Leibowitz: I object.
Court: Overrule the objection.
Mr. Leibowitz: I except.

I don't know whether the Jury Commissioners considered the names submitted here when they made up the jury roll.

Re-direct Examination by Hon. Samuel S. Leibowitz:

I never saw any Jury Commissioner going around the colored sections of this county, holding any inquiry to find any colored person qualified to serve on a jury. I lived here all my life, but never saw or heard of a single instance of any Jury Commissioner ever circulating among the negroes of this county to ask them questions as to their qualifications for the purpose of putting their names on the jury roll.

Q. Did any Jury Commissioner ever send for you to examine you as to your qualifications, to see whether or not you were a man of intelligence and honesty and good character, and whether you were a man who possesses all of these qualifications, to find out if you were qualified, was there any such inquiry made as to you? A. No, sir.

Q. Or any other negro you know of?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: May I respectfully except?

Q. Did you ever see any advertisement in any newspaper, signed by the Jury Commissioners, requesting any negroes who possessed the qualifications referred to to appear before the Jury Commissioners?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I respectfully except.

I never got any official notice, nor did any negro I know from any jury board or jury commissioner to appear for an examination as to our qualifications.

Re-cross Examination by Attorney General Knight:

I haven't heard of any inquiry. A man twenty-one years of age, of good, sound judgment, and a property owner, and a law-abiding citizen, who stands good in the community, is qualified. I don't know whether they ever considered me.

L. R. WOMACK, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is L. R. Womack. I am a minister of the Gospel, pastor of the First Missionary Baptist Church, colored, in Decatur, since October 24, 1931, having 380 parishioners, both men and women, with all of whom I am personally pretty well acquainted. For seven years before October 24, 1931, I was pastor of the Thankful Baptist Church at Johnson City, Tenn. This letter, dated October 16, 1931, was given me voluntarily by Mayor B. B. Snipes of Johnson City, white.

Q. According to this letter, signed by the Mayor of Johnson City, Tennessee, which certifies, "I have known—"

Attorney General Knight: We object.

Q. "I have known Rev.—"

Attorney General Knight: We object.

Mr. Leibowitz: We are not before a jury now, General Knight; I want to put the question on record.

Q. "This is to certify I have known L. R. Womack during the past six years, and I have known him to be the pastor of the Thankful Baptist Church at Johnson City, Tennessee. He is a fine Christian gentleman, and is constantly looking after the welfare of his people. Rev. Womack enjoys the confidence of the people who know him, both white and colored. Sincerely yours, B. B. Snipes, Mayor."

Court: Sustain the objection.

Mr. Leibowitz: I except.

I am acquainted with the men whose names are on the list you show me. They are all male citizens of Morgan County, who are generally reputed to be honest and intelligent men, and who are thought well of in the community for their integrity, good character and sound judgment, and none of them under twenty-one or over sixty-five years of age, none of them habitual drunkards, and none of them afflicted with a permanent disease or physical weakness which would render them unfit to discharge their duties as a juror, and none of them cannot read English, and if there are any persons who cannot read English, those persons are householders or freeholders, and none of them have ever been convicted of any offense involving moral turpitude. In all my life in Morgan County I have never known of a single instance of a negro serving on a jury, nor in all my experience in the county of a negro ever being summoned to serve on a jury, including myself. I have never been examined as to my qualifications by anybody, by the Jury Commission, or their agents, servants or employees, nor do I know of any other colored person ever being examined as to qualifications for the jury. I don't know whose name is on the jury roll, nor how they

make it up. No one ever told me, not that I know of, explained it to us colored people. Nobody has ever brought to my attention, either publicly or privately, or by advertisement, any desire on the part of the Jury Commissioners to take qualified negroes on the jury roll.

LIST OF REPRESENTATIVE NEGROES OF MORGAN COUNTY.

School Teachers: W. J. Wilson, J. E. Pickett.

Preachers: Rev. L. A. Womack, Robert Fuller, John Watkins, J. I. McGahee, W. A. Wilhite, Dilliard Williams, Rev. Newby, George Eldridge, U. G. Draper.

H. L. Murphy, Tom Garth, Walker Lipscomb, W. A. Mills, Hess Thompson, Parker McKelvy, C. B. Irwin, Will Irwin, A. L. Harris, J. J. Sykes, Robert Smith, R. L. Hunter, C. F. Robinson, C. M. Syles, George Reynolds, Stanley Basham, Oscar Whitaker, H. J. Banks, T. W. McWilliams, A. O. Sheffey, E. E. Jones, R. L. Anderson, F. G. Dinkins, Will Steele, Lias Hatton, W. E. Binford, Mack Saxton, Wm. Gee, Abe Long Nathan Washington, Neal Sykes, Wm. Craig, T. W. Bridges, Julius Williams, John Love, Will Porter, George Nelson, Henry Brown, Robert Browder, J. H. Harris, James Johnson, Wm. Frierson, Albert Ruffin, Robert Bridgeforth, W. W. Bough, Henry Jackson, Edmond White, Dan Matthews, Hilliard Tate, Allen Draper, Amos Russell, John Humphry, Clifton Draper, Will Jennings, Oscar Jackson, Oscar Sharply, Claybourn Sharpley, Byrd Sharpley, Lee Bibb, Allen Davis, Tom Davis, Jeff Robinson, Will Townsend, Will Garth (Cedar Lake), Richard Vaughn, Charlie Toney, Dave Garth, Oliver Garth, Philip Lightfoot, I. Z. Moore, Isom McDaniel, R. C. Smith, E. J. Pryor, Wm. Martin, Jim Skinner, Alex Mathews, Henry Mattison, Billy Baker, Will Montgomery, Charlie Montgomery, Wm. Murphy, Lesly Luckett, Wm. Johnson, Will Terry, Ananias McDonald, John Dillon, Cal Barnett, Charles Vaughn, Charles Couty, J. A. Dean, Mathew McLean, Tom White,

Robert Dawson, Clarence Pope, J. J. Jackson, Robert Jackson, E. I. Owens, Tommy Reedus, Frank Ballentine, Will Garth (Decatur), Jerry Elliott, Mack Lewis, Leo Sykes, Banks Patterson, Asa Jones, J. N. Martin, Forest Settle, Sam Whittaker, Scipio Garth, Hill Bolden, Daniel Thomas, J. C. Carpenter, James Lyle, Frank Owens, Albert Donald.

Cross Examination by Attorney General Knight:

I testified that I didn't know how the Jury Commissioners selected the juries in Morgan County.

Q. You don't testify they didn't consider the colored people in this county when they made up the jury rolls, do you? A. That question wasn't asked me.

Q. I am asking you now.

Mr. Leibowitz: We object to that question on the ground it is incompetent, irrelevant and immaterial and if the question is directed to be answered then I rightfully urge upon the Court the right to inquire of this witness whether or not if the men of the character he has mentioned have never been called for jury service or jury duty if they have been kept off the list, whether that would be arbitrary, in his opinion.

Q. I will ask you and repeat the question whether or not you know whether the Jury Commission of Morgan County considered this list of names here you submitted?

Court: Overrule the objection.

Mr. Leibowitz: I except.

I have no information whatever coming from the Jury Commission of the county; I don't know whether or not they considered the list of names.

Re-direct Examination by Hon. Samuel S. Leibowitz:

Q. Mr. Womack, you have been brought here to give your opinion as to the qualifications of certain people on that list? A. Yes, sir.

Q. By reason of your knowledge of them and what other people told you about them, their reputation and so forth? A. Yes, sir.

Q. If it is shown in this case beyond any doubt that there was no negro, let alone these qualified men you spoke of, ever put on that roll, would you then say in your opinion as a citizen of this community that the exclusion of such negro from that roll was arbitrary and unwarranted by reason of his race or color?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

J. J. SYKES, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is James J. Sykes. I was born in Decatur and have lived here all my life. I am fifty-seven years of age. I am unmarried, have relations in town. I have a moving picture theatre business on Vine Street in Decatur. I never drink, nor am I suffering from any permanent disease or physical weakness which would render me unfit to discharge the duties of a juror. I think I have a fair idea of what the duties of a juror are. He is expected to render a judgment in the case according to the evidence and according to the law as announced by the Court in fairness and justice.

Q. According to your idea as to the duties of a juror, do you know of any reason why you couldn't discharge those duties fairly and honestly? A. No, sir.

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

I have never been convicted of nor committed any offense of any kind. I read and write English, vote since 1901. In my business I meet various citizens of the community; sometimes I discuss with them and neighbors the affairs of the day, topics of the time, what is happening in the nations, the State and the community. I engage in social relations, visit with my neighbors, talk with them about affairs of the day. I discuss politics considerably with citizens and neighbors. I believe in the teachings of the Bible and am a member of the Baptist Church, and attend pretty regular for thirty years. I believe in the Constitution of the United States and in supporting my Court and its officers. I have never served on any jury in this county, nor ever been summoned to serve. I have never been examined by anybody connected with the administration of the jury system as to my qualifications, nor were any tests ever put to me, mental or otherwise, by anybody of the Jury Commission, nor have I ever been requested to appear for such test. I have never refused to serve as juror. If I had been selected, I would have been willing to do my duty as a citizen in a jury box fairly and honestly. I am personally acquainted with the men on the list I have; they are all male negroes over twenty-one and under sixty-five, with the possible exception of two or three. They are all citizens of Morgan County, some in Decatur. As far as I know, all are generally reputed to be honest and intelligent men, favorably thought of in the community for their integrity, good character and sound judgment. As far as I know—and I know them intimately—not one of them is an habitual drunkard, none of them are afflicted with a permanent disease or physical weakness which would render them unfit to discharge the duties of a juror. I don't know anybody that can't read, to my knowledge. None have ever been called to serve on any jury in Morgan County. So far as I know, no one of them has ever been

asked to appear for jury duty in any Circuit Court in Morgan County. I have on many occasions come to the court rooms in this county at the terms of court and been a spectator. I saw jury cases tried before the juries in this county on many, many occasions. I have never seen negroes on a jury in this county. There are many more negroes besides these who possess the qualifications called to my attention for service on juries.

[List filed to conserve time is as follows:]

School Teachers; W. J. Wilson, J. E. Pickett.

Preachers: Womack, Robert Fuller, John Watkins, J. I. McGahee, W. A. Wilhite, Dilliard Williams, Newby, George Eldridge, U. G. Draper.

Business Men: H. L. Murphy, Tom Garth, Walker Lipscomb, W. A. Mills, Hess Thompson, Parker McKelvey, C. B. Irwin, Will Irwin, A. L. Harros, J. J. Sykes, Robert Smith, R. L. Hunter, G. F. Robinson, C. M. Sykes, George Reynolds, Stanley Basham, Oscar Whitaker, H. J. Banks, T. W. McWilliams, A. O. Sheffey, E. E. Jones, R. L. Anderson, F. G. Dinkins, Will Steele, Lias Hatton, W. E. Binford, Mack Saxton, Wm. Gee, Abe Long, Wm. Craig, Nathan Washington, Neal Sykes, T. W. Bridges, Julius Williams, John Love, Will Porter, George Nelson, Henry Brown, Robert Browder, J. H. Harris, James Johnson, Wm. Frierson, Albert Ruffin, Robert Bridgeforth, W. W. Bough, Henry Jackson, Edmond White, Dan Mathews, Hilliard Tate, Allen Draper, Amos Russell, John Humphry, Clifton Draper, Will Jennings, Oscar Jackson, Oscar Sharpley, Claybourn Sharpley, Byrd Sharpley, Lee Bibb, Allen Davis, Tom Davis, Jeff Robinson, Will Townsend, Will Garth (Cedar Lake), Richard Vaughn, Charlie Toney, Dave Garth, Elmer Garth, Phillip Lightfoot, I. Z. Moore, Isom McDaniel, R. C. Smith, E. J. Pryor, Wm. Martin, Jim Skinner, Alex Mathews, Henry Mattison, Billy Baker, Will Montgomery, Charlie Montgomery, Wm. Murphy, Leslie Luckett, Wm. Johnson, Will Terry, Aninias McDonald, John Dillon, Cal Barnett, Chas. Vaughn, Chas.

Couty, J. A. Dean, Matthew McLire, John Perry, Tom White, Robert Dawson, Clarence Pope, J. J. Jackson, Robert Jackson, Ed Owens, Tommie Reedus, Frank Ballentine, Will Garth (Decatur), Will Rogers, Jerry Elliott, Mack Lewis, Leo Sykes (blind), Banks Patterson, Asa Jones, J. N. Martin, Forest Settle, Sam Whittaker, Scipio Garth, Hill Bolden, Daniel Thomas, J. C. Carpenter, James Lyle, Frank Owens, Albert Donald.

I am a notary public, designated by the Governor of Alabama as a person of moral character and good reputation and intelligence, empowered to administer oaths to affiants. I am familiar with all on the list but one, J. C. Carpenter. I don't know him. Those men have the qualifications of the men on the other list referred to.

Q. In your opinion, according to the test I have outlined, they are fully qualified to serve and entitled to be on that jury list?

Attorney General Knight: We object.
Court: Sustain the objection.

[List of names set forth in testimony of L. R. Womack inserted.]

I know intimately all the men on the following list; all are male negro citizens of Morgan County, for a great many years; I think they meet all the tests of qualifications: Dr. N. E. Cashin, Dr. Frank Sykes, Dr. Newman Sykes, Dr. D. V. Darden, H. J. Banks, Rev. E. Mison, A. C. Ruffins, Henry Jackson, H. L. Murphy, Dr. T. R. Boalware, E. E. Jones, Rev. Arthur Matthews, Prof. Council Harris, Prof. J. E. Pickett, G. W. Eldridge, Prof. W. J. Wilson, Thomas Eldridge, John Eldridge, H. Swift, Arthur Roberson, Sam Deamer, C. V. Hill, John Chandler, W. S. Swoopes, F. K. Vaughn, Banks Patterson, John W. Bates, William Frierson, J. H. Vaughn, Dallas Priest, Rev. Willie Wilson, Charles Brooks, R. L. Anderson, Frank Owens, Dr. A. O. Sheffey, Carl Sykes, J. J. Sykes, Dr. W. J. Woods, Clarence Pope, Willie Rodger, Rev. L. R.

Womack, Percy Johnson, Aron Orr, Clarence Bailey, Neal Sykes, Alonzo Harris, Harry Johnson, Luther Straughter, James Hill, Solomon Young, Will Garth, Will Porter, T. R. Bridges, W. W. Bough, T. W. McWilliams, J. N. Martin, Wm. Gee, A. W. Matthews, Rev. I. W. McGahee, Rev. Shy, George Reynolds, Rev. Polard, Rev. W. A. Wilhite, Dan Matthews.

I know the men on the following list; the same holds true of them as of the men on the other list. I have never known of any of those negroes serving or ever being summoned for jury duty in this county. I. Z. Moore, Joe Washington, P. F. Ballentine, Sr., Rev. James Myter, Robert Pates, P. F. Ballentine, Jr., Otis Johnson, Rev. James Cater, Green Shelby, F. G. Dinkins, Dr. W. H. Sherrard, W. E. Binford, Ed Owens, Oscar Whitaker, Ed. Harris, Rev. James Neal, Prof. P. C. Nick, Prof. N. I. McDonald, Prof. Thompson, Willie Mathews, Edmond White, George Nelson, James Shelby, Charlie Toney, Council Irvin, Will Irvin, Charlie Vaughn, J. J. Jackson, Henry Mattison, Jerry Elliott, Prof. Breeding.

Some on those lists are men who served this country in the World War, who went across the sea and fought for the flag.

Cross Examination by Attorney General Knight:

I am Dr. Frank Sykes' uncle. I served on a United States Jury eight or nine years ago, but never on a jury in this county. I don't know who selects United States Juries; I know who selects these juries. I like politics. I don't know whether I would make a good Jury Commissioner or not. I said I think all on the list possessed the qualifications. I have not examined exhaustively into their character and reputation, and don't know whether the Morgan County Jury Commissioners did, or whether they reached a different conclusion from mine. I don't know whether they considered them or not. I wouldn't say they hadn't.

John H. Harris possesses a good reputation, as far as I know; he lives on the west side of town over here. I guess he is not in the jury box, but don't know; I never saw the jury roll. I had no opportunity to see it. I never saw Mr. Tidwell, Mr. Tomlinson and Mr. Brisco when they were engaged in the selection of the jury roll for this county and don't swear they didn't consider the names of these people.

W. J. WILSON, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is Rev. W. J. Johnson. I am a Baptist minister of the Gospel. My congregation is St. Luke Baptist Church, Athens, Alabama, in Limestone County. I was born in Montgomery County, Alabama, live in Morgan County twenty-two years and preach in Limestone County. I finished the Normal School, a school of collegiate rank at Montgomery, Alabama. I took my A.B. from State College at Montgomery, Alabama. I am a family man, have children. I preach and teach, I am principal of Gibbs Street colored school in this city now. I received a teaching license after an examination by the State of Alabama, an investigation as to mentality, academic qualifications, and moral standing, and am certified as the type of person to teach the citizens of Alabama. I have never served on a jury in the County of Morgan; no Jury Commissioner ever sent for me to come to court and serve on a jury. I have known of a colored man being sent for to serve on an Alabama jury, but not in Morgan County. I am over twenty-one and under sixty-five; I am a total abstainer; I am not now, nor was I ever afflicted with a permanent disease or physical weakness that would render me unfit to discharge the duties of a jury.

My conception of a juror is he should be able to determine the evidence and out of the evidence presented to him find the truth and give his verdict; the juror passes on the facts and applies the law, as stated by the Judge, to the facts fairly and impartially; and renders a judgment on the evidence. I can read English. I have never been convicted of any offense involving moral turpitude; I am a member of the African race, a negro, as were all the preceding witnesses, except the Court Clerk. With the exception of Amos Russell, Oscar Sharpley, Claybourn Sharpley, Byrd Sharpley, Lee Bibb, Jim Skinner, John Perry, Hill Boulden, Arthur Robertson and John Chandler, I know all the men on these four lists, some I know well, the others by reputation. As far as I know they are all male citizens of this county, who are generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character and sound judgment; all over twenty-one, and, I think, none over sixty-five. I don't think there is any habitual drunkard among those men. None are, to my knowledge, afflicted with any permanent disease or physical weakness which would render them unfit to discharge the duties of a juror; I don't know one that can't read English. I have never known any of these men on these four lists that has ever been summoned to serve on a jury in this county; I myself was never examined by the Jury Commissioners, nor at any time ever asked by anyone connected with the jury system any questions or put to any tests as to my qualifications as a juror, nor sent for for such purpose; nor do I know any men on these lists ever being sent for to be put through any test. I have never written any letter or communicated with any jury official in this county, stating I would not serve as a juror. I believe in the Constitution and the laws of the State of Alabama to the fullest extent and also the Constitution and the laws of the United States of America.

[Four lists inserted in record with same force and effect as if named by witness; one list is fully set out in testimony above of L. R. Womack; other lists are inserted in transcript herein of testimony of J. J. Sykes, names eliminated by this witness excluded.]

If summoned or selected I would freely and conscientiously serve as a juror.

Cross Examination by Attorney General Knight:

The last time I was in Montgomery was last July. I attended the State Masonic Grand Lodge. I take part in the affairs of my people; in politics; I do not belong to the Communist Party. I eliminated certain people from the lists. I. Z. Moore lives in the eastern part of this town. Most of these names are from the town, some of them live in the county. Dave Garth is a farmer and a man of good moral character, as far as I know; so is the Garth at Cedar Lake. I don't know if one of them is not in the penitentiary; every time you put a man in the penitentiary doesn't say he isn't good. I know I haven't been called to court to be examined for jury service; I think that is evidence I was not examined. I don't know whether Mr. Tidwell, Mr. Tomlinson and Mr. Brisco ever examined my reputation nor whether they examined me to ascertain whether I was a man of sound judgment or to find out or consider my qualifications for jury service. I don't know and couldn't say whether they considered the qualifications of the people on that list for jury service. I don't know whether these names are on the jury roll or not.

Re-direct Examination by Hon. Samuel S. Leibowitz:

In all my life no man that I know of, black or white, has ever said a single word against my reputation, honor or integrity. I am a member of the Republican Party and have been since I was twenty-one.

Recross Examination by Attorney General Knight:

I do not belong to the Lily White or black and tan section of the party. I do not know of my knowledge whether or not anyone ever questioned the reputation of this list of names.

J. E. PICKETT, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. G. W. Chamlee:

My name is J. E. Pickett, I am teaching in the Negro High School at Decatur eighteen years. I graduated from State Teachers College at Montgomery in 1923 with the degree B. S. Before that I went to the Agricultural and Mechanical College of Alabama five years. I had been in the elementary school before I went to A. and M. eight years. I went three years to State School; in all I was in school sixteen years. I am employed by the City Board of Education, Decatur. I have a school of eight negro teachers, one man, seven women, all college graduates, and about 500 negro students. I stood examination before graduating college. I am pretty reasonable acquainted in Decatur and Morgan County.

I belong to a Presbyterian church about twenty years, a small church on West Cherry Street, and I try to live up to my church's requirements and Christian regulations. I am reasonably acquainted with many of the 140 names on the list filed by the witness Sykes, about fifty; they are male citizens living in Morgan County; they are intelligent men, and men that are esteemed in the community for their integrity, good character and sound judgment. No one is an habitual drunkard nor afflicted with a permanent disease or physical weakness which would render him unfit to discharge the duties of a juror. I do not know any that cannot read English or has been convicted of an offense involving moral turpitude. I know what is meant by moral turpitude and by esteem in the community for integrity. Those I know are freeholders or householders, heads of families, or own land. In the thirteen years I have lived in this county I have never seen a negro on a jury nor do I know any of these negroes whose names I have read as qualified on this list ever to have been summoned for jury duty. I have never been asked to perform jury duty.

I am non-partisan, am qualified to vote under the Alabama law and vote in elections. I haven't had an opportunity to refuse to serve on a jury. I would have served if the Jury Commission had sent for me. On this other attached list, marked J. J. Sykes, I know thirteen men. P. F. Ballentine, Sr., Rev. James Hyter, Robert Pates, Rev. James Carter, F. G. Dinkins, Dr. W. H. Sherrard, Oscar Whitaker, Edmond White, Council Irvin, Charles Vaughn, J. J. Jackson, Prof. Breeding, Otis Johnson and P. F. Ballentine, Jr. I know about 75 per cent. on the list entitled H. J. Banks; Dr. N. E. Cashin, Dr. Frank Sykes, Dr. Newman Sykes, H. J. Banks, Henry Jackson, H. L. Murphy, Dr. T. R. Boolware, E. E. Jones, Prof. Council Harris, Prof. J. E. Pickett, Prof. W. J. Wilson, Banks Patterson, F. K. Vaughn, William Frierson, J. H. Vaughn, Dallas Priest, R. L. Anderson, Frank Owens, Dr. A. O. Sheffey, Carl Sykes, J. J. Sykes, Dr. W. J. Woods, Clarence Pope, Rev. L. R. Womack, Percy Johnson, Aaron Orr, Clarence Bailey, Neal Sykes, Alonzo Harris, Luther Straughter, James Hill, Solomon Young, Will Garth, T. R. Bridges, T. W. McWilliams, W. W. Bough, J. N. Martin, William Gee, Rev. I. W. McGahee, Rev. Shy, George Reynolds, Rev. Pollard, Rev. W. A. Wilhite, Dan Matthews. They are all men over twenty-one living in Morgan County, generally reputed to be honest and intelligent men, and esteemed in the community for their integrity, good character and sound judgment, they are men of soberness, as far as I have been able to learn of them. I don't know any of them afflicted with a permanent disease of physical weakness such as to render him unfit to discharge the duties of a juror, or any ever convicted of a crime involving moral turpitude; they can read and write English and are all freeholders or householders of Morgan County.

Cross Examination by Attorney General Knight:

I do not know whether or not my name is in the jury box of Morgan County. I do not know whose names are in the jury box. I do not know whether those men are

on the jury rolls of Morgan County. I do not know whether or not they were considered for jury service. I do not know whether they are fitted for jury service or not.

ROBERT BRIDGEFORTH, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. G. W. Chamlee:

My name is Robert Bridgeforth. I am thirty-seven. I live at 402 Second Avenue North in Decatur. I have lived here thirty-seven years. I never saw a negro on a jury in Morgan County Circuit Court. I have never served on a jury. I operate a billiard parlor at 407 West Vine Street. I enlisted in the army in the World War in October, 1917. I was discharged April, 1918. I am acquainted with many people in Decatur and in this county. I know practically all the men whose names are on the Womack list headed by H. L. Murphy. They are male citizens of Morgan County, Alabama, generally reputed to be honest and intelligent men, esteemed in the community in which they live for their integrity, good character and sound judgment, over twenty-one and all under sixty-five, but I think Prof. Harris is over sixty-five; able to read English, not diseased or having any physical weakness such as to render them unfit to discharge the duties of a juror; not habitual drunkards; not ever convicted of any crime involving moral turpitude to my knowledge. I know all on the H. J. Banks' list headed by the name of Dr. N. E. Cashin. The persons on that list are male citizens of Morgan County, Alabama, generally reputed to be honest and intelligent men, esteemed in the community for their integrity, good character and sound judgment, over twenty-one and under sixty-five years of age; not habitual drunkards; not afflicted with a permanent disease or physical weakness which would render him unfit to discharge the duties

of a juror; not ever convicted of any offense involving moral turpitude, that I know of. They are all freeholders or householders in Morgan County, Alabama. I never knew of any one of them ever being called for jury duty in Morgan County, nor have I ever seen a negro on a jury in the Circuit Court or County Courts of Morgan County, Alabama.

Cross Examination by Attorney General Knight:

I know all these people a good while, some I meet around my place of business, not all. I run a negro poolroom. I do not know whether I was ever considered for jury duty by the Jury Commissioners. I do not know whether or not my family relations is the reason my name is not in that box. I do not know whether or not those names on that list were considered by Mr. Tidwell, Mr. Tomlinson and Mr. Brisco for jury service. I do not know whether or not they are in the jury box of Morgan County.

GEORGE H. REYNOLDS, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. G. W. Chamlee:

My name is George H. Reynolds. I was born in Hillsboro, Alabama, twelve miles from Decatur, in Lawrence County, adjoining Morgan County; I live in Decatur for the last two and one-half years; I am an undertaker for three years, a graduated embalmer. I went to Tuscumbia High School; A. and M. Institution, Normal, Alabama; Moorehouse College, Atlanta, Georgia; Fisk University, Nashville, Tennessee, and Washington College of Embalming, Chicago, Illinois; in all eight years of schooling. I am well acquainted with the citizens, especially the negroes, in Morgan County. I know all on that list (identifying

long list included in this transcript of testimony of James J. Sykes). The men whose names are on that list are male citizens of Morgan County, generally reputed to be honest and intelligent men, as far as I know; esteemed in the community for their integrity, good character and sound judgment, as far as I know; all over twenty-one and all under sixty-five years of age, as far as I know; none that I know of are habitual drunkards or have ever been convicted of any offense involving moral turpitude or is afflicted with a permanent disease or physical weakness such as to render him unfit to discharge the duties of a juror; as far as I know, they can all read English and write; are all freeholders or householders, as far as I know. I know the people on this other list you hand me (referring to list set forth herein in transcript of testimony of James J. Sykes headed by name Dr. N. E. Cashin). They are male citizens of Morgan County, Alabama; generally reputed to be honest and intelligent men; esteemed in the community for their integrity, good character and sound judgment; over twenty-one and, as far as I know, under sixty-five years of age; not one that I know of is a habitual drunkard or has ever been convicted for any offense involving moral turpitude, or is afflicted with any disease or physical weakness such as to render him unfit to discharge the duties of a juror; they all read the English language and are freeholders or householders of Morgan County. I never saw any of them on a jury nor ever heard of any one of them being on a jury in Morgan County. I know all on the list you hand me (referring to list spread in record of transcript of testimony of James J. Sykes herein, headed by name I. Z. Moore). They are all male citizens of Morgan County, Alabama; generally reputed to be honest and intelligent men; esteemed in the community for their integrity, good character and sound judgment; over twenty-one; and, as far as I know, under sixty-five years of age; none that I know of is an habitual drunkard, nor afflicted with any permanent disease or physical weakness such as to render him unfit to discharge his duties as a juror, nor ever convicted of any felony or offense involving

moral turpitude; all can read English, as far as I know; all are freeholders or householders of Morgan County, Alabama. I never knew or heard of any one of them sitting on a jury in the Circuit Court of Morgan County, Alabama.

Cross Examina n by Attorney General Knight:

I said I knew practically all of the names. I know Robert Bridgeforth; he keeps a pool room. He, like the others, is esteemed in his community as a man of sound judgment, as far as I know. I don't know whether the Jury Commission never considered him as a prospective juror; I do not know whether or not his name is in the jury box; I do not know whether or not I was ever considered as a qualified juror or whether or not the Jury Commission ever considered me and my qualifications for jury service. I have no way of telling whether they considered any of the other names on these lists you have identified. All are good men, as far as I know.

Court: I will give you two more witnesses along this line of testimony.

Mr. Leibowitz: We wish to put on the record we have a number of others along the same line, and we should like to put their names on the record.

Court: You can put on the record you offered to introduce those witnesses, the record can show this in the evidence; the Court stated that you may examine two more witnesses along this line and that would conclude the examination along this line.

W. J. WOOD, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is Willis James Wood. I am forty-four, reside in Morgan County seventeen years, am married and a householder. I have real estate, pay taxes, vote since 1916.

Q. Before you became a voter you passed certain tests pertaining to the qualifications of a voter?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: This is a question of intelligence. I except.

I have studied the Constitution of the United States. I was graduated from two institutions of learning, Tuskegee Institute of the State of Alabama and Mehery College. I took the prescribed literary course and brick masonry at Tuskegee, but did not receive a degree there. As part of that course I studied the arts and sciences, English, literature and history, and the general course given to a student in an academic college. At the other institution I studied all of the sciences pertaining to dental medicine, including medicine needed as preliminary training to dentistry. I passed an Alabama State examination; am licensed and have never been charged with malpractice nor removed from my profession by any board. I am a member of the First Baptist Church of Decatur, and have been for twenty-five years. I attend regularly and believe in and practice the teachings of the church. I am acquainted with the congregation church members and also engage in social relations with people of my race. As a part of my life I see citizens in this community and discuss with them the various affairs pertaining to the political life of the nation; we have our civic organization, the Negro

Civic League, of which I am a member. There civic questions are discussed, matters of the public welfare of the community and the nation. I take part in that discussion with other members of the organization. In private life I visit other folks, engage in the social activities of the community, and partake of the average and ordinary affairs in the life of the community. I am over twenty-one and under sixty-five, and a citizen. No man, so far as I know, has ever accused me or ever said I was a man of bad character. No one has ever challenged my sound judgment, my integrity as a man, my loyalty to the United States or the State of Alabama, or their constitutions and laws. I believe in supporting and have always believed in supporting the constitution and constitutional laws of the State. I have been a good, law-abiding citizen.

I do not drink to excess. I was never drunk. I am not afflicted with any permanent disease or physical weakness which would render me unfit to discharge the duties of a juror. In my opinion to be on a jury—you would expect a juror to be able to judge impartially by the evidence given, that would be my judgment; listen to the Judge; I wouldn't know what he was supposed to do in the jury room; bring in a verdict if they agree, I suppose; discuss the evidence with the jurors in the jury room. I have never been convicted of any offense whatsoever. I know how to read and write English, read the newspapers, and follow the events of the day. I think I am as well up on the events of the day as the average, ordinary citizen, as to what is going on in the nation, State and community. In all the years that I have been a resident of Morgan County I have never been summoned to appear for service as a juror nor have I ever served as a juror.

I am seldom around the court house, but I have been in court as a spectator and have seen it in operation trying jury cases. I have never seen a colored man of African descent on a jury in Morgan County, nor heard of any. I have never stated to the Jury Commissioners or ever communicated with any jury official in charge of the sele-

tion of jurors that I would not serve on a jury if called. I have never refused to do my duty as a juror. I have never been invited to appear before any board or any member of any board, or any of its agents, servants or employees. No one connected with the selection of the jury roll ever examined me with reference to my qualifications as a juror, nor do I know any negro that has ever been invited to appear for or undergone such an examination.

Q. As a matter of truth, and as a matter of honesty, and as a matter of straightforwardness, has any negro ever been selected as a juror in Morgan County?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

I am a member in good standing of the Masonic fraternity and Independent Order of Elks of the World; of the Masons about twenty years and the Elks about ten. I am Master of the lodge now, and Exalted Ruler of the Elks' Lodge, colored people. I don't know that I have ever seen the four lists you hand me. The names I don't know are John Dillon, Prof. P. C. Nick, and I don't seem to know Billy Baker. The others are all negro male citizens of Morgan County, generally reputed to be honest and intelligent men, esteemed in their community for their integrity, good character and sound judgment; none under twenty-one nor over sixty-five; none an habitual drunkard, or afflicted with a permanent disease or physical weakness which would render him unfit to discharge the duties of a juror; if there is any person there who cannot read English he is a householder or freeholder; and none ever been convicted of any offense involving moral turpitude, as far as I know.

I am a negro. I was commissioned as First Lieutenant, General Reserves, United States Army, during the World War, but I never was called into service, and never have

been discharged. I believe in and support the Constitution and the laws of the country and defend its flag. I have always maintained that feeling toward our country, always been loyal to it, and to the State of Alabama and its institutions, and I have always supported the Constitution and laws of Alabama and always intend to.

Cross Examination by Attorney General Knight:

I live in Decatur. A mixture of white and colored people comprise the community. I identified those names and said I had never served on a jury; I have never served on a Federal jury. I know the Jury Commissioners of this county. I know there should be a Jury Commission for this county. I do not know whether or not the Commission examined or considered these names identified as in my estimation people of good character and esteem. I do not know whether these names are in the jury box.

DR. N. M. SYKES, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is Newman M. Sykes. I am forty-five years old, a citizen of Morgan County, and a resident of Decatur. I am a duly licensed physician in the State of Illinois; I am medical director for the Liberty Bell Insurance Co. in Alabama. I am a graduate physician. I have never been removed as such by any authority, nor ever been charged with any professional misconduct. I was born and raised here in Decatur. I am not married. No one that I know of has ever charged me with dishonesty or ever challenged my integrity, good character or sound judgment. I am a graduate of Decatur public school; preparatory department, Shaw University, Raleigh, North Carolina, a Bachelor of Science of Fisk University, Nash-

ville, Tennessee; a graduate of the University of Illinois Medical Department, where I received my medical degree. I passed the State medical examination of the State of Illinois. Here I am a medical director; I discuss treatment. In Illinois I was a county physician for St. Clare County for nine years, appointed by the Commissioners. I am not an habitual drunkard, not now afflicted nor ever afflicted with a permanent disease or physical weakness that would render me unfit to discharge the duties of a juror. I am familiar with the qualifications of a juror, and I believe with their duties and obligations. I can read English; I have never been convicted of any offense involving moral turpitude, nor of any offense whatsoever. I have never been selected as a juror in the State of Alabama, nor ever been summoned to serve on a jury. I have frequently attended court in Morgan County while jury cases were being tried, both criminal and civil. I have never seen a negro on the jury in the County of Morgan. There are hundreds of negroes between the ages of twenty-one and sixty-five. I am a member of the Masons and Pythians, of school fraternities, of the local civic organization. There we transact general civic affairs, discuss the welfare, peace and love and morality of the community. I take part in those discussions.

Q. Aside from your professional duties; by the way, just describe what your professional duties are.

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

At all times I have to engage in social intercourse, discuss the events of the day, political, civic, social and religious. I attend Baptist Church religiously. I visit them all, giving health lectures. I believe to a large extent in the principles of the Christian religion, believe in morality, in upholding the Constitution of the State of Alabama and the United States of America. I never be-

lieved in any ideas to assail the foundation of our Government. I was on the reserve list in the World War, engaged in hospital work, subject to call. I was a commissioned officer of the rank of Lieutenant, in the Medical Corps, and I have never received any official notification I wasn't on the call list, so am not discharged.

Of course, I have never served on a jury. In my attendance in the courts I have never seen a negro on the jury. I hear say negroes were on Morgan County juries prior to the enactment of the disfranchisement law in 1901. Since 1901 I have never heard of any negro ever having served on a jury in Morgan County. I helped prepare the written one of these four lists; I know what is on that one; on the other three lists I believe I know all but H. Swift and Billy Baker. They are all colored, male citizens of this county, generally reputed to be honest and intelligent men, esteemed in the community for their integrity, good character and sound judgment, over twenty-one, and, with the possible exception of two or three, under sixty-five. None are habitual drunkards nor afflicted with any permanent disease or physical weakness that would render them unfit to discharge the duties of good jurors, to my knowledge. I am quite sure they can read English; the majority of these own real estate and are householders. As far as I know, none of them has ever been convicted of any offense involving moral turpitude. No one connected with the machinery that has in charge the selection of men for the jury roll ever put me through an examination, nor have I ever heard of any other negro being put through such an examination, or of any man on those lists being put through any such examination, with the view to finding out whether he was qualified to serve as a juror. I have never said to anybody I wouldn't serve as a juror. I think it is the duty of a good citizen to serve willingly, faithfully and honestly, and with all conscientiousness, if selected. I would do my duty if I were selected. I feel I am qualified to serve as a juryman.

Q. And if you are excluded as a juryman you feel it would be only because of your race and color?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

I can state with reasonable certainty there are many, many others qualified that I could add to that list, none of whom has ever been called or served on a jury.

Cross Examination by Attorney General Knight:

I know about five Will Garths; the Will Garth on the list I helped prepare is the Will Garth that chauffered for the Misses Dancey sisters; he is not the one sentenced to the penitentiary. I never served on a Federal Jury, when I was in Chicago I was called for jury duty, but I didn't serve. I do not know the Jury Commissioners here. I have no knowledge of whether they considered the people whose names are on that list or not. I have no knowledge of whether they were examined and deemed not to possess the qualifications I think they possess. I have no way of knowing whether these names are on the county jury rolls.

Re-direct Examination by Hon. Samuel S. Leibowitz:

Q. Knowing all of these hundreds of negroes, in Morgan County, possessing all of these qualifications, if it would appear their names have never been on the jury roll, or they have never been called for jury duty, would you consider that a mere coincidence, or would you consider they have been kept from serving as jurors by reason of their race and color?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

Mr. Leibowitz: I want to state for the record, we are prepared to furnish proof from competent, reputable witnesses in the number of about 400 to substantiate the allegations of the petition pertaining to the qualifications of negroes in Morgan County. We are ready to submit these persons named in these lists for the inspection of the Court and for the examination of the Court, to whatever examination the Attorney General of the great State of Alabama would wish to put them with a view to ascertaining the questions as to whether or not any single thing can be indicated or pointed to by either the Court or the Attorney General which would disqualify these citizens of this county from service of jury duty. If your Honor would care to hear them we are prepared to produce them.

Court: They are witnesses whose evidence would be of similar import to the witnesses introduced?

Mr. Leibowitz: Yes, sir, but we will offer them to your Honor, and to the Attorney General of the State, without any restrictions whatsoever, to inquire of them by legal evidence or any other manner you choose, with no objections on our part, as to whether or not those people are qualified to sit on the juries. We contend they are. If your Honor feels we have gone far enough and shouldn't go any further along that line I will note my exception. I offer this list in evidence, I want to put it in the record that this list was left with Clerk Green with the request that subpoenas be issued, and offer this list in evidence as proposed witnesses, and may that list be marked.

[Lists of names presented in evidence are fully set forth in this transcript, one in the testimony of L. R. Womack, the other three in the testimony of James J. Sykes, *supra.*]

Attorney General Knight: I think the record should also show when he offered to produce these

other 400, at what stage of the proceedings he offered to produce them.

Mr. Leibowitz: I am offering to produce pronto within a few minutes.

Attorney General Knight: Have subpoenas been issued for them?

Mr. Leibowitz: We requested the Clerk to issue the subpoenas this morning, and we can produce them without subpoenas. The Clerk was handed this memorandum filed by George W. Chamlee: "Clerk of the Circuit Court. Please file this list of witnesses and issue subpoenas for all of the above and foregoing named witnesses on these four pages to come to Court March 30, 1933, on behalf of the defendant, Haywood Patterson."

Court: The Clerk didn't refuse to issue them?

Mr. Leibowitz: No, sir, he merely put them on the record in view of your Honor's ruling.

Court: The Court holds that the evidence is all of cumulative nature and of the character that has already been introduced, and the Court would not care to hear it.

Mr. Leibowitz: I wish to note my exception.

Mr. Leibowitz: I want to state for the record I am calling this witness because I am constrained to call him to identify the jury roll and the persons on that jury roll, and I call him for no other purpose.

J. A. TIDWELL, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

I am a member of the Jury Board of Morgan County, Alabama. My associates are J. N. Tomlinson and W. J. Brisco, residents of Morgan County. We were appointed March, 1931, by Governor Miller. Prior to that I held no

official position in this county. With the other Board members I performed the duties of a Jury Commissioner, and in January and February, this year, as in 1932 and 1931, made up a list of the names of citizens of Morgan County, known under the statute as the jury roll. I am acquainted with the big red book Sheriff Davis just brought into court, marked on the back, "Jury Roll, 1931, Morgan County." It was typewritten by the clerk, Mrs. J. E. Wilks, a resident of Decatur, at our order. In February, my recollection is, was the last time the book was written into. Whatever was entered in that book was entered by order of the Jury Commissioners. It contains the jury roll for 1932 and 1933. The 1931 jury roll and the others, on loose leaves, have to be taken out because there isn't enough room. Pages are numbered consecutively; if removed, you can tell which are missing. No pages are missing from the roll.

[Jury roll for 1933 offered in evidence.]

The jury in this case, the Haywood Patterson case, was drawn from the jury roll of 1933. The names in the box which Judge Horton set on the bench and from which he drew the names put in that box, were taken from the list of 1933. That is the list from which Judge Horton drew that jury of 100 men. They came from this 1933 list in this red book.

[Offered in evidence.]

I am familiar with the duties of my office, with Section 14, which pertains to the jury, and which requires me to put on that jury roll all male citizens possessing the qualifications, who are reputed for their character, intelligence and sound judgment. I am required to put them on that roll, the names of all male citizens possessing the qualifications, and I have endeavored to do that, as far as I know. I do not know these men personally, not all of them. Sometimes we go into various precincts of the county to people we know to be intelligent. On this page here with the letter "A," I know E. C. Aldridge. "Cull" next to his name is a nickname. The names on this first page are in beat No. 1 in Decatur. In beat No. 1 I inquire as to the

qualifications of these men. I talked to a good many people. I couldn't tell right off who. I don't know if they are all white citizens.

Q. Can you give us the names of any person from whom you got that list of names there, who you consulted?

Attorney General Knight: We object.

Court: Sustain the objection.

Attorney General Knight: He has got no right to grill him as to how he obtained the information on which he exercises his discretion.

I cannot point to any colored citizen on that particular page. I don't know whether they are white, black or yellow. I don't know all under letter "A" in the various beats you name. I know some. The names I know in the book are all names of white men.

CAPTAIN JOE BURLESON, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. Samuel S. Leibowitz:

My name is Joe W. Burleson. I am captain in the National Guards of the State of Alabama, on duty in the court house pursuant to the orders of Governor Miller. My home town is Hartselle. I have lived there a good many years. I am familiar with some of the residents of the Town of Hartselle.

Court: I will let you ask him how many men he knows and whether he knows they are white or colored.

Q. Will you give us the names of those you don't know?

Court: Sustain the objection to that.

Mr. Leibowitz: We except. You see, your Honor, it is not a question of proportion I am seeking to prove, I am seeking to demonstrate there are no negroes on that list, I would like to have that clearly understood.

Court: That would be interminable proof and I think the facts testified to would be matter which the Court would consider.

Court: I will limit this to the present year, the present jury roll.

Mr. Leibowitz: Your Honor will limit the proof as to that in every respect?

Court: Yes, sir.

Mr. Leibowitz: In other words, if I understand your Honor's ruling, your Honor will take no proof as to any prior years?

Court: Yes, sir.

Mr. Leibowitz: I except.

Court: In other words, you are offering now to show a jury roll prior to the jury roll from which the cards were obtained and put in the box, and the Court sustains the objection to going into jury rolls or asking questions prior to that.

Mr. Leibowitz: I except. In order to state my position for the record, I desire to offer the jury roll for 1932 in evidence for the purpose of proving, which I am confident of being able to do beyond a shadow of doubt, that there is not a single name on that entire jury roll for 1932 of any colored person or negro. The purpose only is to show the custom in the past years the same as in the year 1933, which is an arbitrary exclusion and violation of the Fourteenth Amendment of the United States Constitution, and I note my exception to your Honor's ruling prohibiting me from offering that proof.

Court: Very well.

Cross Examination by Attorney General Knight:

I don't know all of the people in this country, I so stated, I only knew a few people in comparison with the number on the roll.

Q. And you didn't know their color? A. Those I didn't know, naturally, I didn't know their color.

Mr. Leibowitz: We object on the ground he objected to my asking the names specifically so they might be identified, and now he is shutting out the proof I sought to offer.

Court: I will let him state he doesn't know the others.

SHERIFF BUD DAVIS, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination by Hon. G. W. Chamlee:

Court: Gentlemen, if you are going to ask the same character of questions it will be limited in the same way.

I am the sheriff of Morgan County.

[The witness scanned the jury roll, giving the number he knew, but not the names, in all the beats into which Morgan County is divided on the jury roll.]

After looking over every single name on that jury roll, from A to Z, I don't know as I could point out any single negro on it. I don't recognize any negro on that jury roll offhand; I wouldn't know who all was on it.

[The defense filed the following certificate of the Secretary of State giving the census of Jackson and Morgan Counties:]

STATE OF ALABAMA }
MONTGOMERY COUNTY }

I, MRS. MARIE B. OWEN, Director of the Alabama State Department of Archives and History, do hereby certify that the said Department is designated as an official depository for all government documents, including the reports of the United States Census Bureau, and further certify that the 15th CENSUS OF THE UNITED STATES—1930, POPULATION VOLUME 111—PART 1, REPORTS BY STATES—ALABAMA—MISSOURI, COMPOSITION AND CHARACTERISTICS FOR COUNTIES, CITIES AND TOWNSHIPS, on file and of record in said Department, at the Capitol, in the City of Montgomery, pages 130 and 135 respectively, discloses the following information:

	Total Population	Males	Females	Color	
				Whites	Negro
Jackson County	36,881	18,801	18,080	34,192	2,688
Morgan County	46,176	23,122	23,054	37,865	8,311

(Signed) MARIE B. OWEN,
Director, Alabama State Department of Archives and History.

Subscribed and sworn to before me this 22nd day of March, 1933.

(Signed) MRS. VONCILE B. SAYERS,
Notary Public,

Montgomery County, Alabama.

THE STATE OF ALABAMA

DEPARTMENT OF STATE

I, PETE B. JARMAN, JR., Secretary of State of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that, as disclosed by the records of this office Mrs. Voncile B. Sayers was, on October 22, 1931, duly commissioned as a Notary Public in and for the county of Montgomery for a term of four years. I further certify that by virtue of such appointment she is authorized by law to administer oaths, take acknowledgments and proofs of instrument in writing, and I further certify that her signature to the instrument hereto attached is, to the best of my knowledge, information and belief, genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol in the City of Montgomery, this 22nd day of March, One Thousand Nine Hundred and Thirty-three.

(Signed) PETE B. JARMAN, JR.,
Secretary of State.

(Seal)

J. A. TIDWELL, witness recalled by the State.

Direct Examination by Attorney General Knight:

I am a member of the Jury Board of Morgan County. Within my power I secured, as far as I know, a list of all male citizens of Morgan County.

Q. Did you secure that list after a consideration of their race or color?

Mr. Leibowitz: I object because it is a self-serving declaration.

A. No, sir.

Attorney General Knight: Self-serving, he is informing the Court whether or not he systematically excluded jurors.

Court: Overrule the objection.

Mr. Leibowitz: I except and object on the further ground the list speaks for itself.

Court: The law requires of the Jury Board the name of every male citizen of the County over twenty-one and under sixty-five, and the occupation, and so forth, should be obtained.

A. This list of names I obtained from available sources of information; it included all male citizens between the ages of twenty-one and sixty-five.

Q. Did you obtain that—you have stated you did not obtain that list after the consideration of the race or color of any male citizen? A. No, sir, we never considered the race or color.

Mr. Leibowitz: We move to strike that out.

Court: Motion denied.

Mr. Leibowitz: I except.

From that list we compiled the jury roll. We did not consider race or color of any person put on that jury roll.

Q. As a matter of fact, you don't know of your personal knowledge every person on the jury roll?

Mr. Leibowitz: We object to leading.
Court: Overrule the objection.

A. No, sir. I could not open that book now and tell whether or not every person on that jury roll is white or black.

Q. You did not select for jury service with the idea of discriminating against them on account of their race or color? A. No, sir.

Mr. Leibowitz: I object.
Court: Overrule the objection.
Mr. Leibowitz: I except.

Persons not on that jury roll were not excluded on account of their race or color. I know the qualifications under the statute. I placed on the jury roll as far as I was able and so far as I had information the names of persons possessing such qualifications. I was present in the deliberations of the jury board. When the roll was compiled, all three of us were together. I can't say we considered each person on this Womack list for jury service, but every one that I see here looks familiar.

Q. To the best of your knowledge and belief, will you state you considered those people? A. Yes, sir.

Mr. Leibowitz: I object to leading the witness.

To the best of my knowledge and belief we considered the persons on the J. J. Sykes list. To the best of my knowledge and belief we examined the names of the men on the list headed by Dr. N. E. Cashin for jury service. They were not excluded on account of their race or color. To the best of my information and belief we considered the names of the persons on the H. J. Banks list for jury service. The names on all the lists you showed me were examined by the Jury Board, to the best of my recollection.

Q. Sitting officially, were they not? A. Yes, sir.

Q. In your deliberations as a Jury Board? A. Yes, sir.

Q. For the purpose of selecting jurors for Morgan County?

Mr. Leibowitz: I object to the Attorney General testifying for the witness.

Court: Overrule the objection.

Q. You stated your Board officially and in a body as a Board considered them?

Mr. Leibowitz: I object.

Court: What is the question?

Attorney General Knight: I just wanted him to reiterate that the Board had officially considered them.

Cross Examination by Hon. Samuel S. Leibowitz:

I am testifying not from my own knowledge but on information and belief.

Q. None of the testimony you gave in answer to Attorney General Knight's questions has been of your own knowledge, yes or no? A. We were——

Q. Just answer the question.

Court: Sustain the objection.

By information and belief is meant when I go out and get information on different parties; I, of course—whatever information I have—that is, I don't know it personally, but I believe when I go to the best citizens and get that information that it is correct. I went to the best citizens and got information with reference to each of the names on those four lists. I haven't got the list of such citizens who gave such information; we destroyed that list when we got through. We qualified those we qualified and put the names in the box. We asked various citizens; we talked to a good many colored citizens. I don't know

Dr. N. E. Cashin personally. I know of him. He is a negro doctor. I don't know if he is a reputable physician in town; I know nothing about him. I don't know Dr. F. J. Sykes. I do know Dr. D. V. Darden. I have seen him and talked to him. I served a citation on him for a license, is my recollection. I know Dr. W. H. Sherrod personally. I think I served a citation on him when I was in the license department. I know Dr. W. J. Wood. I think I have been in his office and served a citation on him. I don't know Dr. T. R. Boalware. I think I have seen Prof. W. J. Wilson. I don't know him well. I don't know J. E. Pickett, the school teacher, nor Preacher Womack. I don't know John Watkins or J. I. McGahee, W. A. Wilhite, Dilliard Williams, Preacher Newby, George Eldridge or U. G. Draper. I don't recollect going to any particular preacher in this county to consult him with reference to men of his race when considering people to serve for jury duty, nor to any colored civic league in this town. I do not know of a colored Masonic Order here or any official connected with the colored Masonic Order. I do not know any of the officials connected with the colored Lodge of Elks. I am not an Elk. I didn't know they had a colored Elk Lodge here. I didn't consult with the officials of either one of those lodges. I don't know as I can name any particular colored person of Morgan County whom I consulted and asked questions about the different persons of the negro race with the view of ascertaining whether there were any qualified negroes to serve on a jury; I don't know that I have. I don't know whom I consider the leading negro citizen of Morgan County.

Q. Can you give me the name of the man who in your estimation you consider the most intelligent, the most upright, the man of the most sound judgment, the finest citzen among the negroes you know?

Attorney General Knight: We object as immaterial and irrelevant.

Court: Sustain the objection.

Mr. Leibowitz: I except.

I do not know of any negro in Morgan County over twenty-one and under sixty-five who is generally reputed to be honest and intelligent and who is esteemed in the community for his integrity, good character and sound judgment, who is not an habitual drunkard, who isn't afflicted with a permanent disease or physical weakness which would render him unfit to discharge the duties of a juror, and who can read English, and who has never been convicted of a crime involving moral turpitude.

On the list headed by the name of Dr. Cashin I know Robert Bridgeforth personally about two years and Jerry Elliott. I have spoken to Bridgeforth. I had to check up on his place to see whether he had a license for the business he was operating; he did have. That is as far as I know about him from my personal contact. This man Elliott, I just served a citation on for a car tag or truck tag; that is all I know about him. Outside of these two, I did not see any on the list I recognized.

On this Womack list I know N. E. Cashin and Frank Sykes there when I see them. I never knew who Sykes was until the other day I went down there to serve a citation on him for an embalmer's license; and Tom Garth, Hess Thompson, Will Irwin, J. J. Sykes, Stanley Basham, Oscar Whittaker, and I think I have seen this A. O. Sheffey. I only know them by sight, not personally; I know them when I see them; I am not intimate with them. I have talked to J. J. Sykes. He is a pretty intelligent fellow. I don't know whether he is educated or not; I haven't ever seen his certificate. He is over twenty-one; I don't know whether he is sixty-five. I don't know about his being a college graduate. I don't know anything against his character. I have never known of him ever being convicted of any crime. I have never seen him drunk. He has no mental troubles; he has got a crippled leg. I don't know anything against his integrity. I never heard him read; I don't say he can't read. The qualifications of a juror, as far as I remember, are he has to be a man that is honest; he has got to be honest; a man of integrity,

esteemed in the community in which he lives for his sound judgment and so on. He has got to be a man over twenty-one and under sixty-five years of age. If he cannot read and write and possesses the other qualifications my recollections is the law says we may put him on the jury roll; we don't have to; it says we may. I don't remember the other qualifications. I can't call them off. There is a qualification with reference to conviction for an offense, I remember, involving moral turpitude. I know what is meant by moral turpitude. He must be a man of good morals. I think if he has been convicted of any offense it involves moral turpitude. If he has been convicted of speeding it would affect his morals; not if he was convicted for not having a license on his car. Running a car without license would be a violation of the law; I would exclude from jury duty for that.

Q. Suppose a fellow parked his car in a restricted zone against the law, would that be moral to your mind? A. I don't think that would amount to anything.

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: I except.

I don't know who all we had on our list; we keep those on the list that are qualified and those we do not qualify we put them off the list. I couldn't say whether J. J. Sykes' name is on that jury roll.

Q. We can ascertain his name by looking over the S's; it will just take a second.

Court: It is before the Court.

Attorney General Knight: The discretion of the Jury Commission cannot be impeached by cross examination as to the qualifications of a particular person.

Mr. Leibowitz: In respect to the Attorney General's statement to your Honor, I want to say if

the action of the Jury Commissioners is arbitrary or unwarranted, then it ceases to be a discretion.

Court: I have permitted—

Mr. Leibowitz: I am stating now that J. J. Sykes isn't on this jury roll, and the jury roll is before the Court.

Court: He said he didn't know.

Mr. Leibowitz: I want to let him look at it.

Court: The Court knows that, whether his name is there or not.

Q. The name of J. J. Sykes is not on that jury roll; can you ascribe any reason for the disqualification of J. J. Sykes?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: I except.

Q. You didn't exclude J. J. Sykes by reason of any questions I asked you before?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: I except.

Q. If it should appear that J. J. Sykes met every requirement of the law we have been discussing here, pertaining to the qualifications of jurors, and you failed, neglected, refused and omitted to place his name on the jury roll, can you ascribe any reason for such failure, neglect, refusal and omission?

Attorney General Knight: We object.

Court: Sustain the objection.

Mr. Leibowitz: I except, and I want to add to it, except he was a member of the negro race.

Attorney General Knight: We object.

Court: Sustain the objection.
Mr. Leibowitz: I except.

[When the above question was read from a transcript of the testimony taken on the hearing before Judge Horton on the motion to quash the venire, the Judge trying the case at bar held that the question was legal and informed the defense counsel they could now call the said witness Tidwell for the purpose of having him to answer this question and Tidwell was recalled in this trial at bar and answered the question as shown at page 353 of this bill of exceptions. He was called solely to answer this question in the former testimony on the motion.]

I know Tom Garth when I see him, not as well as I know J. J. Sykes. I went there and served a citation on him; that is all I know about him. I know Thompson when I see him; I went there to check up on his embalmer's license. I know Will Irwin only when I see him. I know Stanley Basham when I see him. I know he is bootlegging.

Mr. Leibowitz: I move to strike that out.
Witness: He has been convicted in the City Court for bootlegging.
(No ruling.)

I have been there and served a citation on him for a cafe license. I think the city record will show he has been convicted several times. Oscar Whittaker I know only when I see him. I went there and served a citation on him for a car tag. I do not know A. O. Shelley. Doctors are exempt from jury duty if they claim it. They and preachers are exempted and not put on the list. Only those on the list I have mentioned is all I know.

On the H. J. Banks list I know Prof. W. J. Wilson when I see him; no one else. I don't know any names on the J. J. Sykes list other than I mentioned.

Q. Mr. Tidwell, have you ever intentionally put any negro on the jury roll? A. Intentionally?

Q. Yes.

Attorney General Knight: We object; he isn't supposed to put them on intentionally or take them off intentionally.

Court: Sustain the objection.

I am not in court very much, but I have never seen a negro serve on a jury; never heard of one.

Q. Let me ask you this: Can you give us any name of any particular individual who you talked to about these men on those lists with reference to ascertaining their qualifications?

Attorney General Knight: We object.

Court: Sustain the objection.

The names on the jury rolls were selected from a list. We took every male citizen between the age of twenty-one and sixty-five. We got it from the poll list, the City Directory, the telephone directory, and every available place, every where else we could. Outside of the telephone book, the poll list and the City Directory, we talked with different people, white and black. I don't remember any black person I talked to to get those names; I can't name any. He didn't furnish me with a list of the black residents. The black residents were not excluded from the general list.

Q. Did you get a colored list? A. We had—

Court: He already stated he had a general list, sustain the objection.

Mr. Leibowitz: I except.

I am Deputy License Inspector, besides Jury Commissioner. I have served on a jury, but not since I have been a member of the Jury Board.

Q. Do you know the particular kind of sound judgment a man must possess to serve on a jury?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

Q. Can you personally assign any reason why any of the names you have read, with the possible exception of one man whom you say was a bootlegger, as to why their names do not appear on the jury roll?

Attorney General Knight: We object.
Ruling by Judge Callahan: Objection is overruled, and you may put Mr. Tidwell on the stand to answer that question.

Q. Can you state to this Court the name of any person, or can you furnish this Court any information as to the names of those prospective jurors, of the negroes on those lists, that would disqualify them in your opinion by reason of the provisions of the section I referred to?

Attorney General Knight: We object.
Court: Sustain the objection.

Q. All we have here is your bare statement you didn't exclude any negro by reason of his race; that is all you have brought here?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

Q. You told us just about how carefully you examined them as to qualifications, those names on those lists; do you want to add something to it?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

Q. With reference specifically to those four lists, did you apply any other test or take any other means to ascertain whether they were qualified for jury service?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

I actually saw those names on the list made up from the poll list. I couldn't say about how many names were on the poll list, one, five, ten, I don't know. I don't remember the names.

Q. If you don't know the individual the name means nothing to you?

Attorney General Knight: We object.
Court: Sustain the objection.

The name of James Johnson on that list means nothing to me, just a name. The names mean nothing to me if I don't know the individuals.

Q. If that is so, how can you tell, how can you come here and swear before this Court you considered those names when the names mean absolutely nothing to you, no more than John Doe, or Richard Roe, or any other name?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

Q. Can you explain that any more fully?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

We have destroyed our list. The names don't amount to nothing to me.

Q. You can't swear one way or the other as to those particular names?

Attorney General Knight: We object.
Court: Sustain the objection.
Mr. Leibowitz: I except.

[This completed the evidence taken on the former hearing on similar motion. This evidence had been read to the Court, both questions and answers, but the same is not fully set out in this bill of exceptions. It is transcribed herein in narrative and abridged form instead of copying the whole of the transcript of the evidence on former trial. After reading the former testimony herein referred to, the Court allowed defendant to call J. A. Tidwell, to have him answer the question propounded to him on former hearing on the motion and to which Judge Horton had sustained an objection by the State. Thereupon the following occurred.]

J. A. TIDWELL, being sworn, testified:

Q. Mr. Tidwell, on the former trial you were asked a question which was objected to by the State, and the objection sustained by the Court. This Court has ruled that you answer the question. The question is this: "The name of J. J. Sykes is not on that jury roll, can you ascribe any reason for the disqualification of J. J. Sykes?" A. He is very badly crippled and when we was discussing his case, his fitness for jury service, we thought that his condition was such that he wasn't physically able for jury duty, and we had other information which we thought might affect his character so as to bar him from the jury.

Mr. Brodsky: May I go into that further?
The Court: No, sir, that's all you asked for.
Mr. Brodsky: Exception to your Honor's ruling that I may not go further on that point.

The Court did not deny defendants a right to call and examine this witness on this motion.

This was all the evidence on behalf of defendant on motion to quash.

WHEREUPON, the State offered in evidence the following affidavits:

STATE OF ALABAMA }
MORGAN COUNTY }

Before me, J. H. GREEN, Circuit Clerk in and for said State and County personally appeared W. J. BRISCOE, who being duly sworn, deposes and says that he is a member of the jury board of Morgan County, Alabama, and has been for several years. That he was one of three members of the present jury board which selected those residents of Morgan County whose names were placed on the jury roll and in the jury box from which the venire was drawn to try the case of the State of Alabama vs. Haywood Patterson. He further states that the clerk of the jury board, in pursuant to law, submitted to the jury board of which affiant is a member, a list containing the name of every male citizen of Morgan County, Alabama, between the ages of twenty-one and sixty-five years of age, which list, so far as affiant knows or can ascertain, was complete and correct. That from this list the jury board selected those persons who, in their opinion, possessed the qualifications prescribed by law. That in the selection of those persons whose names appear on the jury roll and in the jury box, the members of the jury board did not exclude any person because of race or color, but considered every man whose name was placed on the list submitted to them by the clerk of the jury board, and only excluded those persons who, in their judgment, did not possess the qualifications prescribed by statute, and further states that their judgment was not arbitrarily arrived at, an inquiry being

made wherever practical as to the qualifications of those persons whose names appeared on the list submitted to them by the jury clerk. Affiant further states that he cannot definitely state whether or not the names of colored men appear on the jury roll or in the jury box of Morgan County, inasmuch as it is impossible for him to know each person personally.

W. J. BRISCOE,
Affiant.

Sworn and subscribed to before me
this the 23 day of November, 1933.

J. H. GREEN,
Circuit Clerk.

STATE OF ALABAMA }
MORGAN COUNTY }

Before me, J. H. GREEN, Circuit Clerk in and for said State and County personally appeared JOHN W. TOMLINSON, who being duly sworn, deposes and says that he is a member of the jury board of Morgan County, Alabama, and has been for several years. That he was one of three members of the present jury board which selected those residents of Morgan County whose names were placed on the jury roll and in the jury box from which the venire was drawn to try the case of the State of Alabama vs. Haywood Patterson. He further states that the clerk of the jury board in pursuant to law submitted to the jury board of which affiant is a member, a list containing the name of every male citizen of Morgan County, Alabama, between the ages of twenty-one and sixty-five years of age, which list, so far as affiant knows or can ascertain, is complete and correct. That from this list the jury board selected those persons, who, in their opinion, possessed the qualifications prescribed by law. That in the selection of those persons whose names appear on the jury roll and in the jury box, the members of the jury board did not

exclude any person because of race or color, but considered every man whose name was placed on the list submitted to them by the clerk of the jury board, and only excluded those persons who, in their judgment, did not possess the qualifications prescribed by statute, and further states that their judgment was not arbitrarily arrived at, an inquiry being made wherever practical as to the qualifications of those persons whose names appeared on the list submitted to them by the jury clerk. Affiant further states that he cannot definitely state whether or not the names of colored men appear on the jury roll or in the jury box of Morgan County, inasmuch as it is impossible for him to know each person personally.

JOHN W. TOMLINSON,
Affiant.

Sworn and subscribed to before me
this the 23 day of November, 1933.

J. H. GREEN,
Circuit Clerk.

THIS WAS ALL THE EVIDENCE.

COURT'S OPINION.

Gentlemen, on this motion there cannot be very well but two questions involved. The first would be whether or not the laws that are enacted by the State of Alabama with reference to the qualifications of jurors, and the method of obtaining information and preparing the rolls and placing the names of the parties in the jury box are violative of the Federal Constitution. That is the first question, as I understand the motion. The next is that in the administration of that law, the officers of the State of Alabama, to whom that duty is assigned, so administered that law as to deny to the negro the right of admission on the jury rolls, and putting their names in the jury box. That is the question now under consideration?

Mr. Brodsky: Yes, sir.

The Court: So that is to be settled by evidence as to whether they have so administered that law as to deny the right of the negro on the jury roll or in the jury box, because, and solely because, of his color or race. Now, I tried to follow the evidence as closely as I could. The first witness, as I recall—I may be wrong about that—but, anyhow, he testified, and that was Mr. Green, the Clerk of the Court, that he had been Clerk of the Court for four years or more, and had also been Clerk in the Probate Court, who said in substance, the vital part of it, that during his experience and observation he had never seen a negro drawn on a jury. Now, that is evidence, but it showed little on whether or not because of color or race he had been systematically kept off the jury roll. Well, there are some other witnesses who did testify to never having seen negroes on a jury. These witnesses were not in as good a position to know, as Mr. Green, because it appeared that they did not frequent the courts much. There is also evidence that quite a number of colored male citizens were in the county at the time that roll was made up that are eligible to service on a jury. That comes by the testimony, pretty largely, of Frank Sykes, I believe it was, and that is supported to some extent by the state-

ments of other witnesses. If the evidence were to stop there, in my judgment it would make it a very debatable question, with the tendencies in my mind, that their rights had been denied by the manner in which the jury law had been executed. Now, in a general way, summing up all the movant's evidence in support of his petition, as I say, if the evidence stopped there, I would quash this venire because I believe that it is open to controversy and some answer, and I would be very much inclined to think that the law had not been properly executed. I do not understand there is a holding absolutely that the mere fact that the party—that the race had not been seen on a jury for a number of years would be absolutely sufficient. I think if it ran over a long period it might be, because I think one would be warranted in saying there must have been something that does not appear from the evidence. Now, the State has undertaken to answer that contention, and that evidence is offered. The first thing in the reply of the State is, that the officers in charge of the jury roll, its preparation, etc., are called upon to exercise in a sense judicial functions; it is made their duty to ascertain the qualifications of every male citizen in the county for jury duty between the ages of twenty-one and sixty-five. They are sworn officers of the law, and the law presumes that they did their duty. That is mere presumption, however. Of course, it can be met, and the evidence offered by the defense would tend to meet that presumption by showing the circumstances that I have just detailed. Now, that is a presumption that the law brings into the case, that they have done their duty, and, of course, there must be evidence that would reasonably satisfy the Court that they failed to discharge their duty. Now, in addition to that presumption the State has offered evidence by a member, or members, by each member of the Jury Commission, in which one of them, at least, I have forgotten which, stated that the list of the colored people whose names had been produced by the movant and claimed to be eligible for jury duty had been examined; that they had examined these names and had made inquiry as to the men; they further

say without contradiction that on that jury roll that was obtained by the Clerk, presumably, at least, because the law requires him to obtain it; but at the time of the examination of the names on that roll that they did not know from that roll whether they were white or black. The proof, however, adduced shows, on cross-examination, that they did know a number of the names that were on there, and that they were all white, and that they were unable, at this time, to point out on the roll the name of anyone who was colored. They further testify with positive statements that no one was kept off that roll, or his name kept out of the jury box, because of his race or color. Of course, we all know that the courts hold that the mere fact that a jury roll does not have the name of a colored person on it is wholly insufficient to declare that the law has been so administered as to violate the Constitution of the United States. The Supreme Court of the United States, which is the highest court in our land, has said, with reference to matters of this sort, that if the officers fairly and honestly endeavor to discharge their duty and do not, in fact, discriminate against the negro race in the selection of the jury roll, as we would call it in this case, then the Constitution has not been violated. In view of that declaration of the Supreme Court of the United States, I am prepared to say that I am reasonably satisfied from the evidence before me that the officers in obtaining the jury list, or jury roll, and in selecting the names to go thereon, and selecting names therefrom to go in the jury box, have so administered the law as not to have violated the Constitution of the United States, and with that view of the evidence before me—and that is all I can go on—I shall overrule the motion.

Mr. Brodsky: The defendant excepts to the Court's ruling.

The defendant excepted to the Court's decision overruling the motion to quash the venire.

The trial of the defendant thereupon followed.

At the opening of the trial, counsel for defendant stated that the defense was not ready, as the interrogatories directed to Ruby Bates, a material witness on behalf of the defense, who was without the State, had not yet arrived. Counsel for defendant further stated that the interrogatories and the application for the appointment of a Commissioner to take the deposition of Ruby Bates had been made at the earliest possible time, that is, on November 20, 1933, the day of the arraignment of the defendant; that counsel had learned only a few days before the day of arraignment that Ruby Bates would not appear to testify personally on behalf of the defendant; that the Commissioner had already been appointed and was in possession of the interrogatories; and that the deposition could be expected in a very few days.

The Court suggested that defense had been notified when the case was to be heard several weeks prior to trial, that the witness had not been called or subpoenaed; that no request for continuance had been made on November 20, 1933, when the defendant was arraigned. The Court further suggested that there was a transcript of the witness' testimony taken at former trial before Judge Horton that could be used. The Court declined to continue case and defendant excepted.

The voir dire examination of jurors thereupon commenced on November 27, 1933, and the following occurred:

All the jurors were called around and were sworn by the Court to make true answers to all questions touching their competence as jurors. The Court, in addition to all the questions set out in this bill of exceptions, propounded many questions to all the jurors constituting the venire as to matters of their qualifications and other matters affecting them as proper and legal jurors.

Alex Humphrey was excused by consent.

After addressing questions to all the jurors concerning their qualifications, twelve jurors were called by the Court. The Court thereupon, in addressing further questions to said twelve jurors concerning their qualifications, inquired of the jurors:

Q. (By the Court) Now, the next question I will ask you will require some explanation. The next question is, have you a fixed opinion of the guilt or innocence of the defendant which would bias your verdict. That is inquiring into your state of mind. Now, a fixed opinion is an opinion that you now have as to the guilt or innocence of this defendant, that you do not think there is any probability of its being changed by hearing the evidence in the case. A fixed opinion is such an opinion that you would not be guided by the evidence, after hearing it in this trial. That is a fixed opinion, and that is part of that question. There is some more to it. It says, which would bias your verdict. Well, a bias is the existence of a state of your mind which prevents you, or will prevent you, after hearing all of the evidence in this case and on this trial, from acting with entire impartiality. It does not mean, necessarily, the sympathy or lack of sympathy for the defendant, or for any of the parties involved in this case. Lack of bias, means freedom of mind, so that your mind is in such a state as to receive and consider all of the evidence in the case impartially and fairly. With whatever of prejudice, favor or sympathy, or prejudice against the defendant, or against the state's case, and belief in their innocency as would prevent you from trying this case under your oath, according to the law and the evidence in the case. Now, that is the plain meaning of the words involved in that question. Now, then, under your oath, do you say that you have a fixed opinion that would bias your verdict?

Five jurors were disqualified under this question.

After another series of questions by the Court, touching their qualifications, the Court fully inquired of them on all matters that would render them unfit from any cause or for any reason, and defense counsel proceeded to examine the jurors. During such examination the following occurred:

Q. (By defense counsel to juror) You were asked this question, if you had such belief in the inferiority of the negro, as a negro, that would bias your verdict —let me ask you this question, all things being equal, with a negro on the stand saying "yes" and a white man on the stand saying "no," would you be inclined to believe one against the other?

Court: I think that is a comparison, Mr. Brodsky, and is not proper.

Mr. Brodsky: We respectfully except.

Further in the questioning:

Q. (By defense counsel to juror) Do you know Mr. Wade Wright? A. Yes; I know Mr. Wade Wright.

Q. How well do you know him? A. He used to be out close to us before he came to Decatur.

Q. Personal friends? A. Just as a friend.

Q. Address each other by your first names? A. When we met, we did.

Q. Do you feel that your personal acquaintance with Mr. Wright would incline you more favorably to his side of the case?

The Court: I don't think that question is necessary. I have propounded every question that the law requires, and more, as to grounds of challenge. Now, the law gives you the right to ask questions that you may be informed somewhat of the juror, outside of the ordinary grounds of challenge. What the law contemplates is that you may have such information as will enable you to intelligently strike a jury. That is the purpose of the law.

Mr. Brodsky: We respectfully except.

Q. Do you as a friend of Mr. Wright, having known him a long time, feel any resentment of the criticism levelled against him——

Court: He wants to know if you ever heard any criticism of Mr. Wright of his conduct in the trial of this case before?

A. Yes, I read a little of it in the paper.

Q. Didn't that make you somewhat resentful, that criticism?

Court: That is an argument with the juror, and not proper.

Mr. Brodsky: We respectfully except.

Twelve additional jurors were called into the jury box, and during the examination by the Court, the following in addition to many other questions occurred:

Q. (By the Court) Now, gentlemen, did each of you hear my explanation to the twelve men in the box ahead of me about what was a fixed opinion, and what constituted bias—well, I will explain it again. A fixed opinion is one that means what the word says, a fixed opinion that cannot probably be changed after you have heard the evidence; such an opinion that you would not be guided by the evidence after having heard all of the evidence in this case, but would feel or lean toward that opinion regardless of the evidence in the case. Bias, of course, is a state of your mind in this case which would prevent you, after hearing all the evidence in the case on this trial, from acting impartially on the evidence in the case. Of course that question does not involve the question of sympathy or lack of sympathy, because that has no part in the trial of any case. Lack of bias, means freedom of mind so that your mind is in such state as to allow you to consider all of the evidence in the case, and act fairly and impartially according to the evidence under your oaths. I also ask you if you have such prejudice against this defendant and the negro race, and believe in his inferiority to such an extent as would prevent you from trying this case according to law and the evidence in the case. That belief of inferiority, gentlemen, does not disqualify you, unless that belief in his inferiority prevents you from honestly hearing and determining the evidence in the case. With that

explanation, have you a fixed opinion that would bias your verdict?

Three jurors were disqualified under this question.

Mr. Phil Humphrey, a juror, was examined by defense counsel and testified as follows:

I live in Decatur for the last thirty-odd years. I am a salesman, selling automobiles, I know a good many residents of Decatur. At the last trial I heard Victoria Price for a few minutes in the Sheriff's office. I don't remember what she said. It was not about this case. It didn't make any impression on my mind one way or the other. I know that this is a retrial of the case tried here last April. I know the result of that case. I read Judge Horton's opinion. It did not raise any resentment in my mind.

Then the following occurred:

Q. Now, Mr. Humphrey, the Judge asked you whether you had any feeling of the inferiority of the negro race, which would raise a prejudice in your mind that would keep you from rendering a fair verdict, have you any prejudice against negroes at all? A. No, sir,

Q. Would you, if you had two witnesses on the stand, and tell opposite stories, believe one as against the other, because one was white and one was black? A. That would depend.

Q. Upon the individual who testified? A. Yes, sir.

Q. Would you feel that the defendant should have more testimony to uphold his side of the case, because a negro, than a white man? A. That would depend.

Q. Aside from the fixed opinion defined by the Court, without telling me what it is, have you any opinion about this case? A. No, sir, I haven't given it much study.

Q. From the little study that you did give it, have you any opinion at all? A. A little, not very much.

Q. That little opinion that you have, Mr. Humphrey, the question is, Mr. Humphrey, without telling me what that opinion is, is that opinion about the guilt or innocence of the defendant, have you an opinion one way or the other?

Court: I think he has answered, Mr. Brodsky. I propounded that very question; that is inquiring into the grounds of challenge. What you want to get is such information as will enable you to intelligently strike the jury.

Q. Judge, I was inquiring as to his opinion, and my next question was to whether that opinion was about the guilt or innocence of the defendant, may I not ask whether that opinion was concerning the guilt or innocence of the defendant?—and add that would bias your verdict? A. He has already said that he didn't have it, so why ask it twice.

Q. The point I make is this——

Court: I see your point.

Mr. Brodsky: We reserve an exception to the Court's ruling.

Q. Mr. Humphrey, you said that you had an opinion, without stating that opinion, whether it was concerning the guilt or innocence of the defendant, since you have that opinion, is it your opinion, Mr. Humphrey, that more evidence would be required on the part of the defense, than would be required, than if you didn't have such an opinion? A. I suppose it would take more evidence. It is hard to form an opinion until you hear the evidence.

Mr. Brodsky: Defendant challenges for cause.

Court: Overruled.

(Exception by defendant.)

Q. Mr. Humphrey, you know the defendant as he sits there now, would it take some evidence on the

part of the defendant to remove the opinion you now have? A. Yes, sir.

Mr. Brodsky: We renew our challenge for cause.

Court: Overruled.

Court: Let me ask the juror another question. Mr. Humphrey, in your judgment, whatever you may have heard, or any opinion that you may have had, would that prevent you from fairly and honestly receiving, weighing and considering the evidence that is offered in this case, and giving the defendant a fair and impartial trial, and the benefit of all reasonable doubt?

A. No, sir.

After disposing of the previous twelve jurors, eighteen additional jurors were called into the jury box. During the examination of the jurors by the Court, the following in addition to many other questions already asked by Court occurred:

Q. (By the Court to jurors) Are you opposed to capital or penitentiary punishment?

Five jurors stated they were opposed to capital punishment, and the State challenged for cause. The Court allowed the challenges and defendant excepted.

Q. (By the Court) Now, there is another question I am going to ask you, that I want to explain before you make answer, and it is this: Have you any fixed opinion as to the guilt or innocence of the defendant which would bias your verdict. That means that you have an opinion about the guilt or innocence of this man, and that that opinion is fixed, and so fixed that it would not probably be changed, whatever the evidence might show. If your opinion is such that the evidence when it is offered, and you come to consider it, would not change whatever opinion you may have, before you hear the evidence; that is the kind of fixed opinion; it means one that cannot be changed by the

evidence and nothing else, and jurors are sworn to try a case according to the evidence, and not according to anything else, except apply that evidence to the law as given them by the Court. Now, that is a fixed opinion, and that opinion must be such as would bias your verdict, and would be such an opinion that it would remain the same, no matter what the evidence shows. The question of sympathy or lack of sympathy is not involved in that question at all, because the law does not consider sympathy, nor does any honest juror, and he violates his oath if he does do it. He must try the case, not according to what he has heard, or what he imagines, but from what the witnesses say from the stand, and the reasonable and fair conclusions to be drawn from that evidence. The purpose of the law is that it calls for freedom of the mind, such freedom of mind, that your mind is in such a state as to receive and consider all the evidence, and do it fairly and impartially. Now, after that statement, who has a fixed opinion?

One juror stands up.

Q. It wouldn't make any difference what the witnesses swear, you would still hold to that opinion? A. Yes, sir.

Q. You are in that sort of condition? A. Yes, sir.

Two other jurors also stood up. All three jurors were excused.

The Court recalled Mr. Humphrey, a juror previously questioned.

Court: Wait a minute, I want to ask Mr. Humphrey another question (Mr. Humphrey comes around). Have you such an opinion, either fixed or otherwise that would prevent you from finding a verdict in favor of this defendant when the State closes its evidence, and the defendant did not put on any, if from that evidence you did not believe beyond

a reasonable doubt in his guilt—would you follow that provision of law?

A. Yes, sir.

Tom Briscoe, a juror, on questioning by defense counsel, stated that he knew Mr. Wade Wright, Solicitor of Morgan County, and one of counsel for the State, for the last five years, and that he had employed Mr. Wright as his attorney and had consulted with him. Counsel for defendant challenged for cause, was overruled by the Court and excepted.

Counsel for defendant examined A. T. Shropshire, a juror, who testified as follows:

My name is A. T. Shropshire. I reside at Decatur. I have a little restaurant for about three years.

Thereupon the following occurred:

Q. Mr. Shropshire, have you had occasion to hear the Scottsboro cases discussed in your place of business, since it was last tried here, prior to this time? A. Yes, sir.

Q. Your customers discussed it? A. Yes, sir.

Q. Did you discuss it with your friends? A. Yes, sir.

Q. You have heard opinions expressed on the question? A. Yes, sir.

Q. You would express an opinion on the subject? A. Yes, sir.

Q. The opinion that you had, which you expressed, would you still hold to that opinion? A. Well, no, sir. After I listen to the evidence I might be changed.

Q. In other words, it would take evidence to change the opinion you now hold? A. Yes, sir.

Defendant challenged for cause.

Court: Have you a fixed opinion?

Juror: No, sir, not fixed.

Court: All right, challenge for cause overruled.

Exception by defendant.

Thereafter, eighteen additional jurors were called and examined by the Court. During the Court's examination, the following, in addition to many other questions already made by the Court, occurred:

> Q. (By the Court) Now, there is another question I am going to define to you before I require you to answer, and that is this question: Have you a fixed opinion of the guilt or innocence of the defendant that would bias your verdict? Now, you will notice that it says a certain kind of opinion, that is, a fixed opinion, and that means an opinion that cannot probably be changed by the evidence, no matter what the evidence showed. That would bias your verdict—that is to say, that your mind would be so fixed by that opinion that, after hearing the evidence, however much it may differ or be different from what you supposed it was, or from that on which you based your opinion, that you could not take the case on that evidence and find a verdict according to the evidence, regardless of what your former opinion had been. You see, it is the duty of jurors in trying a case, not on what their opinions were before you come into court, but you swear that you will try the case according to the evidence from the witnesses in the case. Now, have any of you such a fixed opinion of the guilt or innocence of the defendant that you could not give a fair and impartial trial? If you have that sort of an opinion, let me know.

Four jurors were excused because of a fixed opinion.

> Q. Are you opposed to capital or penitentiary punishment?

Two jurors stated they were opposed to capital punishment. They were challenged for cause by the State, and the defendant excepted to the allowance of the challenge.

The Court allowed defendant's challenge of a juror, T. M. Jones, for cause for having a fixed opinion.

Thereafter, the remaining jurors were called into the jury box and were examined by the Court. During the examination, the Court inquired whether the jurors believed a conviction should be had on circumstantial evidence. One juror stated he did not. The State challenged for cause. The challenge was allowed by the Court and defendant excepted.

The Court then inquired of the jurors if they were opposed to capital or penitentiary punishment. One juror stated that he was. The State challenged for cause, the challenge was allowed, and defendant excepted.

The Court then inquired of the jurors as follows:

> Q. Now, the next question I will undertake to explain to you before you answer it. Have you a fixed opinion of the guilt or innocence of the defendant that would bias your verdict? You will notice some words there that probably need some explanation. It don't say opinion, it says "fixed opinion," and it don't make any difference how that opinion becomes fixed, if it is fixed. A fixed opinion is one that cannot be changed, or probably cannot be changed, whatever the evidence might show either as to a man's guilt or his innocence. Now do any of you have such an opinion?

Two jurors were excused for fixed opinions.

Every juror on the venire that appeared was sworn by the Court and was elaborately questioned by the Court touching their qualifications, then the defendant was permitted to ask such questions as he desired. The defendant then examined them.

Voir dire examination covers 83 pages of the transcript of the evidence by the stenographer.

(Thereupon the jury was sworn and the following was the testimony and all of the testimony given at the trial.)

VICTORIA PRICE, sworn as a witness for the State testified:

Direct Examination:

My name is Mrs. Victoria Price. I live in Huntsville, Alabama, and lived there on March 25th, 1931. On that date I was riding on a freight train traveling from Stevenson, Alabama toward Paint Rock, Alabama, in Jackson County. At Stevenson, Alabama, I was on an oil tank. When that train stopped there at Stevenson I got off the oil tank and got on the gondolier. Ruby Bates was with me and got into the same gondola car with me. That gondola car had chert in it, is what they called it, little fine rock, something like gravel. It lacked a foot and a half or two feet of being full. It was a gondolier and it had no top on it. We climbed up the side next to where a box car was towards the caboose. No one else was there at that time except me and Ruby Bates.

I saw this defendant there on that train on that occasion. When I first saw him he was coming over into the gondolier from towards the caboose. The best I could count twelve men were with that defendant there. We got into this gondolier, me and Ruby Bates, and we was sitting in the end next to the caboose; we was sitting there talking,—well, before the train started seven boys got in the gondolier, and they had their feet towards us laying down on their stomachs, with their heads towards the engine, and me and Ruby Bates was sitting there talking, and we heard a racket over our head, and we looked up and saw them coming over, that defendant and the others. When they got over they fired a shot and said "All you white sons-of-bitches unload", and they knocked these boys in the head, about

the head, and knocked them around on the side of the gondolier, and were running up and down the sides of the gondolier to keep the white boys from getting back on. They knocked them all off but one and that was Orville Gilley. That was the only one left on the train. The train was running at that time from Stevenson to Paint Rock. It was somewhere about 12:30, or after one, I would not be positive about it. This defendant had a gun in his hands as he came over into that gondola in which I was riding. He had a gun.

After the white boys were put off the train, one hit me on the head and dragged me back in the gondolier, jerked my pants down, jerked my belt loose, and my pants down, and threw me down on the chert, and one held a knife on my throat, and the other held my legs open. This defendant had sexual intercourse with me. His private parts penetrated my private parts. The others had sexual intercourse with me at the same time and place that he did. On that occasion I had on a girl's coat, a girl's hat, a waist, pair of over-alls and three dresses, and a pair of step-ins. They tore my clothes, pulled my britches off, and tore my step-ins apart. They did not pull my step-ins off, they tore them apart.

The witness was asked to examine an article and testified: That's them, that is the step-ins I had on on that occasion. Those are the ones that they tore off of me or tore apart on that occasion. I had them in my possession, custody, and control up until the time of the last trial here, when I testified the last time.

The step-ins were then offered in evidence.

I had a knife on that occasion. That defendant, Haywood Patterson taken it off of me.

The witness was asked to examine a knife and testified: That's it. That knife was taken from me there. The one, Haywood Patterson is what they called him, who took it away from me. That is, the defendant

there (indicating). From that time, I next saw that knife in the court room at Scottsboro.

Six of these men that came over that car had sexual intercourse with me in that car at that time. Haywood Patterson, while the others were having sexual intercourse with me, had a gun, and kept going around the side to keep the white boys off, except the time he held the knife to my throat. When he was having intercourse with me one held a knife to my throat at that time. While they were having sexual intercourse with me another one held my legs. One of them was holding my legs, and another had a knife at my throat. After they had intercourse with me, that defendant there, Haywood Patterson, he said that they was going to carry us north and make us their women, or else they was going to throw us in the river. That's all I remember.

I got off that train at Paint Rock, Alabama. The train did not stop at Paint Rock, they had it stopped there. This defendant and the men that had intercourse with me were in this gondola then. They were beginning to run up towards the engine then, all of them. I got out of the car at Paint Rock. When the train stopped Ruby Bates was getting off, and I got on the side of the gondolier, and saw what was going on, I got my clothes fastened, and when I got down on the last step of the gondolier, I fell off and I didn't know anything until I come to myself in a store in Paint Rock. Ruby Bates was there.

The witness was then asked as follows by the solicitor for the state: Now, I believe I will ask you Mrs. Price, whether or not this man, this defendant, or the others at that time and on that occasion, had sexual intercourse with Ruby Bates? And she answered: Yes, sir, part of them had hold of Ruby Bates raping her, while they was raping me.

Counsel for the defendant moved to strike out the witness's answer. The motion was overruled by the Court and counsel reserved an exception.

The witness testified further: Orville Gilley was on that gondola when that occurred. He stayed in there in the gondola. Part of the colored boys was holding their knives on him. After I came to myself I went to Scottsboro. In the hospital room. They had two doctors there with me. It was in about an hour and a half or two hours. It was about five or ten minutes after the train left Stevenson before these men came into that gravel car.

Cross Examination:

It is Mrs. Price. I have been married twice. My husband's name was Henry Presley. I was divorced.

Counsel for the defendant asked the witness as follows: Did your husband divorce you?

The solicitor for the state objected to that and the court ruled: You needn't go into that. Counsel for the defendant reserved an exception.

The witness testified further: My next husband's name was Ennis McClendon. I was married to him in the Huntsville court house, by Thomas W. Jones, Judge Jones. I have forgotten the date that we were married. It has been three and a half years ago. We have been married right around four years. My name is McClendon by law. I never went by any name of McClendon, and I never went in the name of Presley.

The witness then stated: I got a divorce at home to prove that I was married.

Counsel for the defendant asked the witness as follows:

Q. Are you divorced from Mr. McClendon?

The Court of its own motion stated: You needn't answer that. The supreme court in this same case held that this same question was illegal. I will have to follow that.

Counsel for the defendant excepted to this ruling.

The witness testified further:

My mother's name is Price. I call myself Mrs. Price. I am not Mrs. Price. I am 25 years old.

The witness testified further:

I have lived in Huntsville for the last past twelve years, and over. I never worked for a coal company nor did my people. I am not acquainted with the DeBardelaben Company. I never worked for the DeBardelaben Company. I never worked anywhere in my life except in the Margaret Mill, now the Fletcher Cotton Mill. Before I lived in Huntsville I was too small.

The witness testified further:

I left Huntsville to go to Chattanooga, March 24th. I started off on the railroad, to go to Chattanooga by railroad by freight train. I got on that freight train to go to Chattanooga with Ruby Bates. I wasn't acquainted with Lester Carter at that time. I never knew him at all at that time; did not know of the existence of Lester Carter on March 24, 1931. I did know a man by the name of Tiller at that time, Jack Tiller. He was my boy friend. I was keeping company with him. Tiller was a married man, but he wasn't living with his wife.

Counsel for the defendant asked the witness as follows:

Q. Was this the first time you got on a freight train, March 24th, 1931?

The Court ruled the witness needn't answer that and counsel for the defendant excepted.

The witness testified further:

When I got on that freight train with Ruby Bates, there was nobody else with me at the time. Wasn't no-

body with me but Ruby Bates. Nobody on the train or on the ground.

Counsel for the defendant asked the witness as follows:

Q. Wherever it was that you got on the train was anybody that accompanied you on the train?

The Court remarked: I don't like to interfere, but I can't allow the time of the court wasted on matters so immaterial. You musn't ask that question again. Counsel for the defendant reserved an exception.

Counsel for the defendant asked the witness as follows:

Q. Had you had sexual intercourse with any man the night before you left Huntsville?

The Court remarked: Wait a minute, and the state solicitor objected to that. The Court sustained the objection. Counsel for the defendant excepted and said: May I state the reason for it?

The Court answered: No, sir, at least I don't require it.

Counsel for the defendant asked the witness as follows:

Q. Did you have intercourse with any men the day before that? The state objected and the Court sustained the objection. Counsel for the defendant excepted and proposed now to apprise the court, not in the presence of the jury, so that the jury may not be affected by the purpose of the question, to state the purpose of the question. The Court declined to do that, saying: I think I know.

Counsel for the defendant asked the witness as follows:

Q. Did Ruby Bates have sexual intercourse, in your presence with one Lester Carter the day before——

The state objected to that. The Court sustained the objection and counsel for the defendant excepted and remarked: I will state to the court when I get through with my question. I don't like to be interrupted.

The Court answered: And I'll make known to you when I rule, too. Proceed if you want to ask another question.

Counsel for the defendant asked the witness as follows:

Q. I want to know if Ruby Bates had intercourse with Lester Carter the day or night before you left Huntsville in and L. & N. yards, in a box car, or any other place in the railroad yards near Huntsville? The state objected to that and the Court sustained the objection. Counsel for the defendant excepted.

The witness testified further. I got on this freight train at Huntsville. I had on overalls. And under the overalls, three dresses. And under the three dresses I had on, I did not say I had on some sort of shirt. I said three dresses, a pair of step-ins, the three dresses was under my overalls, a girl's coat and hat. I had on a shirt underneath the overalls. The shirt was on top of the overalls and dresses. I had on a girl's coat; a girl's hat; I had on a pair of step-ins, three dresses, a pair of overalls and a shirt. I had my shirt on on top of the dresses; my shirt was between my dresses and the overalls. It was a blue shirt, man's shirt. I had shoes and stockings on. I had on a girl's hat. On top of these overalls I had on a coat, a girl's coat. It was cold that day, the day I left Huntsville, pretty chilly. I was bound for Chattanooga. I don't remember what time I left Huntsville to go to Chattanooga. I won't say. It is in my other statement though.

I don't know a car conductor who was here on the last trial by the name of Turner. In Huntsville the train stopped. I got in a box car. I think there was a few men at the lower end, and we got in the far end. We

didn't speak to them. I won't say for sure when I got in the box car, there were any men in there, because I want to tell the truth. I rode in that box car until I got to Chattanooga. I spoke to no men on the way. I didn't speak to a man by the name of Lester Carter. Tiller didn't see me off at the train in Huntsville. If he did, I didn't see him. It was around evening when I got to Chattanooga. Getting towards dark. It was getting dusk. The train pulled up in the yards and stopped. I never paid any attention to the water tank.

Defendant's counsel asked the witness as follows:

Q. Had you ever been to Chattanooga before? The state objected. The Court sustained the objection. Defendant's counsel excepted.

Defendant's counsel asked the witness as follows:

Q. When you got off the train, where did you go? The state objected. The Court sustained the objection. Defendant's counsel excepted.

The witness testified: Ruby Bates was with me when I left the train.

Defendant's counsel asked the witness as follows:

Q. How long did you stay there in the railroad yards until you went back on the return trip?

The State objected to that. The Court sustained the objection.
Defendant's counsel excepted.

Defendant's counsel asked the witness as follows:

Q. Where did you go when you got off the train?

The State objected. The Court sustained the objection.

Defendant's counsel excepted and the Court remarked: That's twice you have asked that; don't let's have that any more.

The following then occurred:

Defendant's Counsel: For the purpose of putting it on the record, if your Honor sustains an objection to it after it is put, I must be content, I want to put a leading question on the record, to preserve this defendant's right.

Court: Go ahead and let's see what it is.

Mr. Leibowitz: I mean that I want to preserve this defendant's rights in putting the question.

Court: You needn't worry about the defendant's rights.

Q. (By defendant's counsel.) Did you, Mrs. Price, after you left the train at Chattanooga, you and Ruby Bates, go with Lester Carter and Orville Gilley, go into a woodland known as the hoboes' swamp?

Court: That is far enough for me to know all I want to know, to know that the question is illegal. I sustain the objection to it.

Mr. Leibowitz: We respectfully except.

Q. Did you that night, in Chattanooga, have intercourse with Orville Gilley?

Mr. Knight: We object to that.

Court: I sustain the objection. You have that same question already raised, raised a half dozen times, and I don't see how referring to it again can do any good.

Q. Where did you come from before you boarded the train to come back to Huntsville?

Mr. Knight: That is objected to.

The Court: Sustained.

Mr. Leibowitz: We except.

Q. Did you stay in a rooming house in Chattanooga kept by a woman named Callie Brochie, that night?

Mr. Knight: That is objected to.
The Court: Sustained.

The witness further testified:

I boarded the train that I claim I was attacked on at the crossing there in Chattanooga. I boarded the train with Ruby Bates alone. Lester Carter and Orville Gilley were not in my company at that time. I had not known Lester Carter up to that time. I had seen him; seen him around here in Huntsville,—but I didn't know who he was. I had seen Orville Gilley before I boarded the train back there in Chattanooga at the depot in Chattanooga when I got off the train. I did not see him in Chattanooga after that. I did not know him at that time. I did not speak to him at all up until the time I was attacked, not on the gondola car. I had nothing to do with him. I wouldn't be positive about what time I got on that train in Chattanooga. Well, it was somewhere from 11:00 to 12:30, I wouldn't be positive.

The following then occurred:

Q. Were you ever convicted of any crime, Mrs. Price?

Mr. Knight: We object to that.
Court: The objection is well taken in the form you have it.
Mr. Leibowitz: We except.

Q. Have you ever been convicted of any crime and served a term in prison for it?

Mr. Knight: We object to that.
Court: Sustained.

Q. Have you ever been convicted of any crime involving moral turpitude?

Mr. Knight: We object to that.
Court: Overruled.

A. What is the question?

Q. Have you ever been convicted of a crime involving moral turpitude and served time in jail? A. No, sir.

Mr. Knight: We object to that.
Court: I will permit her to answer if she has been convicted of crime involving moral turpitude.
Witness: I don't know what that is, Judge, your Honor.

Q. May I ask her, have you ever been found guilty of any crime which involves the breaking of the moral law?
A. I still don't know what you mean.
Q. Have you ever been convicted of the crime of adultery?

Mr. Knight: We object.
Court: Sustained.
Mr. Leibowitz: Exception.

Q. Have you ever served time in prison in Huntsville for a crime involving moral turpitude?

Mr. Knight: We object to that.
Court: I believe she stated she didn't know what moral turpitude was.
Witness: I said, Judge your Honor, I don't know what it means.
Mr. Leibowitz: I thought you just said you did?
Court: No, she didn't say that.

Q. Have you ever been convicted of lewdness?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: We except.

Q. Have you ever been convicted of being drunk?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: We except.

Q. Have you ever been convicted of vagrancy and fornication?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: We except.

The witness further testified: Nobody helped me get on the oil tank car at Chattanooga. I had no money at the time. I was absolutely broke when I went up. I got money from somebody in Chattanooga, there was $1.50. There was seven white boys on the oil tank car when I got on in Chattanooga. I didn't know them. The oil tank car was a good ways back from the engine, back towards the caboose a pretty good piece back from the engine. Not about the middle of the train, nearer the caboose than the engine. We were not standing up on the oil tank car while the train was going out. We was sitting on the end, the end next to the engine. I and Ruby Bates were sitting there, the boys were scattered around on the tank car. Not colored boys, white boys. I did not talk to these boys on the oil tank car when it started out of Chattanooga. We said "Good morning" to them. They said "Good morning" to us. That's all. It was getting along toward dinner time when we got out of Chattanooga. We rode through a tunnel when we came out of Chattanooga.

This little white car here (indicating car on miniature train set up in court room) is a fair sample of the type car that I got on, it kindly resembles it, built up kindly like the one we was on. I was on the front part of that oil car when I came out of Chattanooga, with Ruby

Bates, there were white boys scattered along this oil car. I don't know anything about any trouble at all on that ride from Chattanooga to Stevenson between the white boys and the colored boys. I didn't hear of it. I never saw any colored boys pass along this car between Chattanooga and Stevenson. The white boys all remained on the oil tank car until I got to Stevenson. I don't know that anybody got off at any of the stations that I passed. I was going back home from Chattanooga to my mother because I wanted to go back home.

Q. Had you been able to find work in Chattanooga?
A. No, sir.
Q. You went there to get work?

Court: She said she did, and that's enough.

Q. Did you look for work in Chattanooga?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Leibowitz: We except.

The witness testified further:

I do not know a man named "Red" in Chattanooga. I did not get a letter from "Red" from Huntsville while I was in the Scottsboro jail. I did not meet "Red" in Chattanooga. Nothing happened between Chattanooga and Stevenson, not as I know of. On the way from Chattanooga to Stevenson the train stopped at the water tank at Stevenson. It never stopped from Chattanooga until it got to Stevenson. I do not recall there were several tracks at Stevenson where they switch cars. I got off there. This oil tank car was back towards the caboose. I got off with Ruby Bates. I saw these white boys get off at Stevenson. I don't know there were seven white boys. There were seven white boys that got off at Stevenson. They got off on the same side of the

train with me. That is the side nearest the station. At Stevenson we went up the side of the freight train looking for an empty box car; we couldn't find any, so we got in this gondolier. The train had not been switching at that time, on the tracks there. They were not putting cars on the train. I am sure about that. The train did not stop there twenty or thirty minutes, just long enough to get water, three or four minutes. I didn't count how many cars I walked past to get to this gondola. I don't know, I wouldn't be positive. I walked by several up towards the engine. I seen a couple of gondolas; I didn't count them. Five or six or seven, somewhere along there.

This gondola car that I got in was next to a box car. The best I remember, there was box cars on either end of the gondola.

We did go and get into a gondola car towards the caboose, nearest the caboose, it was towards the caboose, but it was further on up towards the engine.

The following then occurred:

Q. That would be like this box car (indicating)? A. That's not the kind of box car it was; it had a flat top.

Q. The box car had a flat top? A. Sure did.

Q. The gondola car was right next the box car though? A. The best of my recollection it was.

Q. The best of your recollection it was? A. The best of my recollection it was next to the box car. It is in my other statement.

Q. I am not interested in your other statements—you have made a lot of statements haven't you?

Court: Never mind that, go on with your questions.

Q. Did you sit in the end of the gondola nearest towards the caboose, or the end nearest the engine? A. I told you I was sitting next to the box car.

Q. I am asking you if you sat in the end nearest towards the caboose or nearest towards the engine? A. Towards the box car.

Q. That would be towards the caboose? A. Yes, sir.

Q. There was a foot and a half or two feet of chert in this gondola? A. I said that it lacked a foot and a half or two feet of being full.

Q. If you stood up, the side of the car would reach up to about the calf of your leg, wouldn't it? A. No, sir.

This chert was level where we was settin'. I could see over that gondola car. The white boys got in. There was nothing to obstruct our view. Why, sure, we could see over the gondola car. I sat down in that end of the car immediately after I got on it at Stevenson. Nobody helped me get in the car. Ruby Bates got in there with me. I didn't find the white boys in that car when I climbed into it. I did not walk along the track with the white boys. None of the white boys left the tank car and preceded me towards the front of the train. I did not see what the white boys were doing when I got off the oil tank car. I was not paying them any mind at all. I did not do any talking with them on the way from Chattanooga to Stevenson. I was sitting right there on that chert, a foot and a half or two feet from the top of the car, leaning back against the gondola. My back right up against it. The top of my body was not sticking up above the gondola: The sides of the gondola hid me. The chert was only a foot and a half or two feet from the top, where we was sitting down. I couldn't see over the gondola. I could see the tops of the stations go by, and the houses. My head did not stick up over that gondola. I couldn't see except the tops of the buildings. I don't know what a foot and a half is. It looked to be that much to the best of my knowledge, of being full. (Indicating with hands.)

The first time I saw these colored boys was when

that defendant there, and the rest of them, came over the top. It was either five or ten minutes after the train left Stevenson, until these men came over the top. I wouldn't say and be positive. We was about three miles out from Stevenson, I guess.

The following then occurred:

Q. Do you know anything about three miles of road? A. I said about ten or fifteen minutes.

Q. Madam, I am asking you if you know anything about three miles of road?

Court: Mr. Leibowitz, I want you to get all you ought to know from the witness, but don't stand up and argue with the witness; don't do that.

Q. I am asking you whether or not you had in mind, or paid any attention to the mileage, as you were sitting in that gondola after leaving Stevenson? A. I don't know how fast the train was running. They said it was about three miles.

Q. "They" said it, who said that?

Mr. Knight: We object to that.

Court: Sustained.

The witness further testified: I said we had been riding five or ten minutes after I left Stevenson when I saw these colored boys get into the car. The same seven boys I saw on the oil tank car were in this very gondola with me and Ruby Bates, after the train left Stevenson. If there were any other white pasengers on this train besides these seven white boys I didn't see them. I did not see any negro boys on that train, not until they come over the top of the box car, not up until I reached Stevenson. I did not see any colored boys while walking from the oil tank car at Stevenson, while the train was standing there, towards the gondola

car where I finally got on. I didn't notice any colored boys, or notice whether any negro boys were behind me, back towards the caboose, when I got off the train at Stevenson, to go to the gondola car that I finally got on. I didn't see any colored boys at all. I say nothing to Ruby Bates before I got on that gondola, about any negro boys on that train. Ruby said nothing to me. I was a healthy girl at the time,—I wasn't ill at that time when I got in that gondola. I haven't been sickly in my life. I was in good, strong condition until that time. I did not have to wait some time at Stevenson before the train started again; they only taken water. I didn't more than climb up and get over the side and set down until we got started. The boys got on after we did at the other end when the train was moving slow. They did not stay at the other end of the car; they were laying on their stomachs with their faces towards us. I didn't know there was seven until we got to Paint Rock and got off. I didn't count them, I know there was a bunch of white boys. Their feet was pointing towards me. They paid no attention to me at all. So far as I could tell, they were also hoboes on the train. They were lying on their stomachs. These colored boys jumped over into the gondola car where I was riding, over our heads. I wouldn't say positive if I had a snuff box with me that day. I was not using snuff at that time. I never looked for my snuff box when I got to Scottsboro. I did not lose it on my trip. I cannot describe that snuff box. I can give the jury no idea or description of it.

The following then occurred:

Q. How long had you had that snuff box? A. How do I know.

Q. (By the Court) Do you know? A. No, sir, I don't.

Q. Did you have a snuff box on this car, this gondola car you say you were riding on, did you take a chew of snuff on the car? A. A chew of snuff on the car?

Q. Take any of the snuff? A. No, sir.

Q. Did you have any snuff in your mouth while the claimed rape was going on? A. To the best of my recollection, I did.

The witness further testified:

I did not take that snuff I had in my mouth from a snuff box. I took it before I left Chattanooga. I did not take that out of a box. The train had picked up speed in the five or ten minutes after it left Stevenson. Going pretty fast, yes, sir. I have no idea about what speed it was making. I would not say it was going 35 to 40 miles an hour. If I swore that in the Scottsboro trial, it was true. I still say 35 miles. I don't know how fast this train was going at the time it left Stevenson and picked up some speed, but in my judgment about 35 miles, I guess. I had not ever ridden on a train to judge the speed. Nobody told me it was going 35 or 40 miles an hour, they didn't tell me that; that was my judgment about it.

When these negroes jumped over they all came rushing over in there. I don't know whether they all jumped or not. This man jumped over my head. I didn't say all jumped one after another. Twelve, to the best of my judgment landed in that car first. I did not count them as they came over. I am positive there were twelve. I counted them after they was locked up.

I do not know what his gun was by the calibre. I don't know the difference between a .45 or .35, or .32, a .25 or .42 calibre gun, or pistol. I don't know one gun from the other. I saw a gun in the hands of one of these negroes. That defendant there had one. I saw two guns. I do not remember the calibre. I don't know one gun from the other. The best of my recollection one looked like a .45, what I heard them call a .45, I don't know, Judge, your Honor.

These colored boys made a noise, yelling out loud, or

hollering. They made a lot of fuss. They shot from the gondolier, and said, "All you white sons-of-bitches unload". Two or three shots were fired to the best of my knowledge.

The shooting occurred while they were jumping over in there. I did not look for the guns actually to fire the shots. The shots were fired while they were jumping into the gondola. I said they was jumping over into the gondola.

The following then occurred:

Q. Did you see who fired? A. That defendant, Haywood Patterson, sittin' there.

Q. I mean this defendant here on trial, did he fire a shot? A. Yes, sir, he had a gun.

Q. Did you see him fire a shot? A. Yes, sir, he had a gun.

Mr. Leibowitz: We move to strike the answer. Sustained.

Q. Did you see him actually fire a gun? A. Yes, sir.

Q. Did you see another man fire a gun, another shot was fired? A. I said there was two guns.

Q. Did you see either gun fire a shot? A. I never paid attention to them.

The witness further testified:

I don't remember the color of these guns. I know they had two guns. I don't know anything about guns. I do not know if they were automatics, or revolvers. I told you I didn't know one gun from another. This firing was not towards these white men in this car, not pointed towards them—they was jumping off, and what didn't jump off they knocked off. These men started to jump off after the black men got into the car, but there had not been any fighting. They knocked the white boys off. As soon as the negroes jumped in the gondolier, they begun knocking the white boys. The white boys

get up off their stomachs. They all got up. I got up and Ruby Bates got up. I was holding to the side of the car. I started to jump off. While I was holding on to the side of the car, the trouble was going on between the white men, and the black men—the black men were putting the white men off the car. There is what is known as a stirup on these cars, a sort of ladder, or step, where you get off and on. As soon as I saw this trouble coming up, I put my leg over the side of the car to get off, attempting to get off. Ruby Bates was right next to me. I said to Ruby Bates, "I rather be killed as to be in here with these negroes". All this time this fighting was going on and they were putting off the white boys. That took about five or ten minutes.

The following then occurred:

Q. All this time you were fixing to get off? A. Yes, sir, until one of them grabbed me——

Q. Right after the negroes jumped into this car, you got up and said to Ruby Bates, "Come on, let us get off" or whatever words you used, and started to get off as fast as you could? A. We started to get off—they turned around and said, "We are not going to hurt you".

Q. You started to get off as fast as you could, and wanted to get off as fast as you could? A. Sure.

Q. You didn't want to delay a moment longer than you had to after you saw the negroes jump in there with guns and start scrapping with the white boys, am I right? A. Sure, I wanted to get off. I couldn't get off right at the time on account of them negroes——

Q. During this ten minutes while the fight was going on, as you tell it, you were in one position still, with one leg over the car, and one leg inside the car? A. No, sir, when they put the white boys off—I was fixing to get off, and one of them grabbed me and pulled me back and asked me if I was going to "put out" and I said "I don't know what that is".

Q. I haven't gotten up to that point yet, I haven't

reached that point in your story yet, if I understood you, you told me that when the negroes jumped into that gondola car, and you got up and said to Ruby Bates, "Let's get off as quickly as we can"? A. Yes, sir.

Q. You put your leg over the side of the gondola to get off? A. Yes, sir.

Q. There was nothing the matter with your other leg at that time, was there? A. I didn't put my leg over the gondola at the start.

Q. When? A. I said when they knocked the white boys off.

Q. What was there to prevent you from getting off, if you were in such a hurry to get off, what was to prevent getting your leg over? A. I done told you that these negroes run up and grabbed me and wouldn't let me get off.

Q. They had their hands full with the white boys for ten minutes, putting them off, didn't they?

Q. What were you doing from the time you got up to get off the gondola, until after the trouble was over with the white boys, what were you doing? A. Repeat that over, please.

Q. I want to know what you were doing, you say twelve men came into the gondola, and started a fight with the white boys, and that you got up with Ruby Bates, and said "Let's get off", which you said was about five minutes, what were you doing during those five minutes? A. We got to the edge of the gondola, and the negroes was running up and down the side keeping the white boys off——

Q. What about the other side? A. I didn't want to get off on the other side because cross ties were laying along there.

Q. On the side of the gondola, or on the side of the train? A. On the side of the railroad.

Q. Were the cross-ties on the other side, is that why you didn't get off on the other side?

Court: I think you have asked that enough.

Q. Did you testify, Mrs. Price, back in Scottsboro, in the case of Weems and Norris,—I am reading from page 24, were you asked this question and did you make this answer——

Court: Are you trying to find out what she said about she would rather get off and be killed?

Mr. Leibowitz: No, sir, not right now.

Q. Was this question asked you: "Do you know which one was the first one that got down into the car you were riding in?" do you remember that question? A. I won't be positive what I said in Scottsboro because that has been over two years ago.

Mr. Knight: She answered "Yes" to that question before.

Court: Do you remember whether or not you made that statement?

Witness: I wouldn't be positive, Judge, your Honor, it has been too long.

Mr. Leibowitz: That was just to refresh her on what she said about the guns. I want to read one or two additional questions and answers.

Q. Were you then asked this question: "Was it one of these defendants" and you answerd, "Yes, sir, that one sitting right over there, he had a gun", and then this question, "That one yonder, Charley Weems?" answer, "Yes, sir", question, "With a gun or pistol?" answer, "A pistol, a 45"—is that your testimony in the Scottsboro trial of Weems and Norris? A. I said to the best of my remembrance and knowledge.

Q. Did you testify in the case of the *State of Alabama against Patterson* in Scottsboro? A. Yes, sir, I testified against him.

Q. Did you say there, I am reading from page 4 of the record of the *Patterson* case at Scottsboro, was this question asked you: "What did you see this defendant

do in that fight?" and did you answer, "I seen him knock a boy in the head", question, "What with?", answer, "A gun", question, "A pistol?", answer, "A .38", did you say that in the Scottsboro trial? A. Sure I said he knocked him.

Q. So that, at the time you gave your testimony in Scottsboro—you stated here that you didn't know one gun from another—you said it was a .38 and a .45? A. I said to the best of my knowledge.

Q. You don't know one gun from another, and yet you said it was a .45? A. I said to the best of my knowledge it was a .45.

Q. Did you finally get one leg over the gondola?

Court: I think you have got enough of the leg over the gondola. Let's don't take up time on that; that is a waste of time. You have tested her recollection on that all that is possible.

Mr. Leibowitz: Exception.

The witness further testified: When the first negro laid hands on me I was standing up in the gondola at the corner. On the left side, facing the engine, not on the side where the railroad ties were. I was facing the engine on that car. Ruby Bates was with me. When any negro laid hands on me I was standing with one foot over the gondola, the left side as I faced the engine. It was the side I wanted to jump off on. I was stopped from jumping off that side for the five or ten minutes when the fight was going on by these negroes running up the sides of the gondola, the left and right side both.

The following colloquy occurred:

Q. Was any particular negro standing right at the stirrup or step you wanted to get off on? A. How could you get off there when they were running around there that way.

Q. I am asking you, while you were trying to get off during this five or ten minutes, was any particular negro at the point where you wanted to get off, all the time? A. Yes, there was two or three standing at each corner to keep them from getting off on the steps.

Q. At all the four-corners? A. To the best of my recollection.

Q. How about these steps towards the box car, during any time couldn't you have climed onto these steps between the gondola and the box car? A. No.

Q. That would mean just a step, wouldn't it?

Court: I think that's enough on that.

Mr. Leibowitz: Exception.

The witness further testified:

When they laid hands on me, the very next thing that happened, one of the boys grabbed me and jerked me back and hit me in the head with a gun. I wouldn't say which one it was. I was not hit in the back of the head. I was hit right up here somewhere's over the eye (indicating). Somewhere between my eye-brow and the top of my head. He hit me with a gun, with the butt end. The butt end is the handle of it where you hold it in your hand to shoot. To the best of my recollection he had it in his left hand when he hit me. He had his other hand back of me, pulling me. He was not behind me when he hit me, he was kin'ly at my side. Kinder on my side this was (indicating), sorter angling kin'ly; I wouldn't be positive. He had the gun in his left hand; it must have been the right hand that he had on my back. I didn't say exactly at the right. I said the best of my recollection it was the right, he was kin'ly angling; he wasn't standing right up on me. He did not hit me a hard blow on the head with the butt end of that gun, not so hard. It made me bleed. A little bit, not so much. It hurt a little bit; enough to addle me a little bit. I did not

take my handkerchief and start to wipe the blood off, it wasn't bleeding that much. The skin was broken, wasn't it? A little bit. It raised a little lump afterwards. It was swollen, just a little bit. That was this defendant, Haywood Patterson, he was the one that hit me. It wasn't Charlie Weems or Norris? To the best of my recollection it was Patterson. I testified in the Norris case that it was Norris, Norris hit me too, Judge your Honor. I don't know who else hit me.

The following then occurred:

Q. Did some of the others hit you besides them, how many assaulted you besides raping you? A. Explain that over, please sir.

Q. How many hit you besides Norris and Patterson, how many others hit you? A. I wouldn't be positive, they was all running around there over me and Ruby.

Q. How many hit you? A. I am positive that he hit me once. That's the one. (Indicating defendant.)

Q. I want to know specifically, if you can tell us, do you know how many hit you? A. I wouldn't be positive.

Q. More than two? A. I wouldn't be positive, I wouldn't say.

Q. Would you say that as many as twelve hit you? A. I didn't say that twelve hit me?

Q. How many besides the two?

Court: You have answered that enough.

Mr. Leibowitz: Exception.

The witness further testified:

I didn't say the second man hit me with a gun. He hit me on the back. I don't know what with; punched me kinder. I received other blows on the face outside the blow that Patterson hit me. From practically all of them. They struck me with a knife on my throat.

The following then occurred:

Q. I am asking you about places on your face? A. That is on my face.

Q. Who struck you a blow on the face besides Patterson? A. Practically all of them.

Q. With their fists? A. With a knife on my throat, I said.

Q. I am asking about face? A. That is on my face.

Q. Besides the knife, who hit you on the face?

Court; Do you know?
Witness: No, sir.

Q. How many hit you in the face? A. I said I wouldn't be positive, because I don't know.

Q. Was there more than one?

Court: That will do. She has gone over that enough to satisfy anybody, looks to me like.
Mr. Leibowitz: Exception.

The witness further testified:

I was standing part of the time when they hit me in the face. I said I wouldn't be positive how many blows I was struck in the face or on the neck. I don't know if I was hit either with a gun, fist or something. I was picked up and thrown down. I was held over the gondola in order to throw me off. That defendant, Haywood Patterson, wanted to throw me off. He is the one that hit me with the gun. He is the one that wanted to throw me off. He said he was going to throw me off. I was on my feet when they were about to throw me off, kin'ly standing up. I didn't say that he stricken me with his left hand. I said that he hit me over the eye. He hit me with a gun that he had in his left hand. It was at that time that Patterson picked me up to throw me off the car. He said that he was going to

throw me off if I didn't "put out". Patterson did not come along from the front; they was all hovered around us. The white boys were running along up and down the train. One of them did get back on. The other white boys did try and get back on.

The following then occurred:

Q. While you were being assaulted, at that time? A. They said they tried to get back on, I never seen them.

Q. You never saw anybody trying to get on? A. I saw one get back.

Q. You never saw any of the others try to get back, did you? A. I seen one trying to get back, and he was knocked down.

Q. That wasn't Gilley? A. No, Gilley got back on the gondolier.

Q. Was the one that was trying to get back on; was that when you were being assaulted, while you were being hit on the head with a gun, while one of the negroes was trying to throw you off the train,—was that the time that boy was running along there trying to get back on? A. I don't know where he went to. He was trying to get back.

Q. Was that before you were hit in the head with a gun that you saw this boy trying to get back? A. Before I was hit on the head?

Q. Yes, during this five or ten minutes? A. I wouldn't be positive whether it was afterwards or before.

Q. Now, the colored boy that pulled you by the coat after he hit you with the gun, you were standing still at that time, wasn't you? A. No.

Q. What were you doing at that moment? A. Pushing them back, begging them to let us alone.

Q. Was that the time you got one leg over the car?

Court: Let's don't go into that again. I think the witness has answered that enough.

Mr. Leibowith: Exception.

The witness further testified:

Patterson picked me up to throw me over. I probably said that he held me by the feet and held me over the car. I wouldn't be positive what I said. Haywood Patterson had me over the gondola holding me. No negro had hold of my legs while I was hanging from the gondola. I wouldn't be positive about that. I resisted all I could.

The following then occurred:

Q. That while you were hanging over the gondola with some negro holding your legs? A. While this negro had me in his arms over the gondola.

Q. Now you say that no negro held you by your legs?

Court: Mr. Leibowitz, you are just wasting time, in my judgment.

Mr. Leibowitz: Exception.

Court: By going over the same thing over and over.

Mr. Leibowitz: Exception.

The witness further testified:

At that time I was thrown in the chert and raped. I wouldn't say he had me in his arms when he threw me in the chert. He was pushing me down. I fell on my back and struck my head against the chert.

The following then occurred:

Q. Now, going back to whether anybody held you by the legs, I will ask you this, I am reading from page 25, in the Scottsboro trial of Weems and Norris—listen now, please, did you testify as follows: "Q. I will ask you whether or not one of them put his hands on you? A. Yes, sir, that one over there is the one that picked me up in his arms and said he was going to throw me out of the gondola." "Q. Which one is that?" "A. That one be-

hind there, that is one with the gun, he got me by the leg and by the ankle and slung me back in the gondola and picked me up like he was going to throw me out"—did you testify that, just "Yes" or "No", please? A. I won't be positive whether I did or not. If I did that is true, because this has been nearly three years ago.

Q. Did you testify on the last trial, in the Spring, before Judge Horton, as follows: "Q. Was that the last or first thing, being struck on the head with the gun?" A. "No, sir, one of them picked me up by the legs and the back of the overalls and held me over the gondola and said he was going to throw me over." Q. "That didn't scare you?" A. "No, sir, I had rather went over—," that is on page 26 of the testimony taken before Judge Horton, in case of Haywood Patterson?

Court: Did you say that or not?

Witness: Yes, sir.

Court: Did you say the things he read to you?

Witness: Yes, sir, I said them to the best of my recollection.

Q. When he held you over the gondola, by your legs, your hands were down towards the track, wasn't they? A. I told you he had me in his arms.

Q. You said that he held you by the legs?

Court: That's enough of that, go on with something else.

Mr. Leibowitz: Exception.

Q. You screamed when they punched you in the back and struck you on the head? A. No, I was hollering for help.

Q. You passed by houses along the road out of Stevenson, didn't you? A. How did I know when I was lying down——

Q. Did you see any houses as you were sitting up

there, going along, see any farm houses? A. How could I see any house?

Court: Did you see any?
Witness: No, sir, Judge, your Honor.

Q. This was about what time of day——

Court: You have asked her three times.

Q. (Continued) When you left Stevenson? A. Judge, your Honor, I have answered that. I told him I didn't know and wouldn't be positive.

Q. Did you have any lunch that day? A. No, sir, except what was give me.

Q. Where? A. When I left Chattanooga.

Court: That's immaterial; you might just as well ask her what she had to eat here.
Mr. Leibowitz: Exception.
Court: All right, go ahead.

Q. Did Ruby Bates scream at that time? A. I didn't pay any attention to Ruby, I was trying to help myself.

Q. Trying to get off that train, wasn't you? A. I would if he hadn't grabbed me.

Q. You was trying to get off the train? A. Yes, sir, if he hadn't grabbed me.

Q. Grabbed you ten minutes after it started? A. I didn't say ten minutes.

Court: She has testified about all that.

Q. By the way, you say that Haywood Patterson raped you? A. Yes, sir.

Q. You say that he was the man that was trying to throw you off? A. Yes, sir, he was trying to throw me off.

Q. You claim that Haywood Patterson raped you, the

very same man that, before he raped you, was trying to throw you off the train, get rid of you by getting you off the train, you want this jury to believe that?

Court: That is arguing with the witness.

Mr. Leibowitz: All right, exception.

The witness further testified:

On the last trial I testified before Judge Horton, about where I was struck on the head, I told him I wasn't positive where I was hit. I didn't say whether I was hit on the right side or left. I probably told Judge Horton that I was struck on the right side of the head. I was struck between the eyebrow and the top of my head. I wouldn't say which side.

The following then occurred:

Q. Let me read to you from your testimony before Judge Horton, I will start on page 33 of the former trial so that it will be clear:

"Q. One of them smacked you in the head? A. With a gun, yes, sir.

Q. With the butt end of the gun? A. Yes, sir.

Q. On the side of the head? A. Yes, sir.

Q. Right on this side of the head with the butt end of a gun? A. Yes, sir.

Q. That started to bleed? A. Well, a little, not much.

Court: Where were you hit?

Witness: I would say between my eye-brow and my head up here (indicating).

Court: The top of your head?

Witness: Between the eye-brow and the top of my head.

Court: Between your right eye-brow?

Witness: Yes, sir.

Court: And the top of your head?

Witness: Yes, sir.

Court: Between these two points?

Witness: Yes, sir."

Court: Do you remember whether you said that or not?

Witness: No, sir, I don't remember.

Mr. Leibowitz: May it be stipulated that I am reading correctly from the official minutes, or shall I have to bring Judge Horton here?

Court: Judge Horton can't help you.

The witness further testified:

When I was thrown down in that gondola, Ruby Bates was over on the other side. She was threw down on the side. A group of negroes around her, too. I actually saw her being thrown down. I wasn't unconscious.

I don't know how many negroes were around me at the time I was thrown on the chert. Sure they was standing over me. There was six that raped me. I wouldn't say six were standing over me when I was finally thrown over. I said that six raped me. I did not have on all of my clothes after I was struck on the head, after I was knocked down. Well, my pants fell off me while I was standing, and when they throwed me down on the chert they pulled them off. They fell down to my feet. I had them fastened up with a belt. I suppose it was a leather belt. Sure it was a leather belt. I put it around me tight enough so that it would not let my pants fall off; sure I did. One of the negroes unfastened my belt. I am sure of that. Then my pants fell down. That was after I was hit. That was after I got several blows in the face. I didn't say they were hard blows.

The following then occurred:

Q. I am asking you whether or not it was after you were struck the blow on the head that the negro un-

fastened the buckle and your pants fell off? A. I told you that he hit me before he threw me down. I told you I was standing up when he hit me and unbuttoned my pants after that and they fell.

Q. Was that the time that you were picked up and thrown over the gondola, or was it during that time they took your belt off and you landed on your back? A. How do I know?

Q. (By the Court): Do you know whether it was or not? A. No, sir, I don't know.

Q. Did you examine your back afterwards in the Scottsboro jail, to find out if your back was bleeding? A. How can I see to look at my back?

Q. Did you look at your back afterwards in a mirror or something? A. No, sir, the doctor looked at it.

Q. Did you find any blood on your back? A. No, sir.

Q. Did you testify before Judge Horton on that point? A. I ain't answering your question yet. I said I didn't know whether there was any blood or not, but there was bruises on my back.

Q. Did you scream out at any time while lying on the ground, on the chert? A. Sure I hollered until I couldn't holler, while I was lying there.

Q. You were on your back from five or ten minutes after you left Stevenson until shortly before you reached Paint Rock, were you not? A. I don't know how long I was on my back.

Q. How long were you on your feet, or in an upright position before you reached Paint Rock, five minutes? A. You mean was I off the chert?

Q. Yes? A. I had done got up when the train stopped at Paint Rock. When I got to Paint Rock I got off.

Q. Didn't you testify before Judge Horton that you had been up and for your clothes on you and all fixed for five minutes before the train pulled into Paint Rock? A. No, sir.

Q. Wasn't that your testimony last spring before Judge Horton? A. If it was I don't remember it.

Q. If you so testified, was that true? A. I don't remember it if I testified that way.

Q. If you did so testify was that the fact? A. I don't remember testifying to it.

Q. Will you say that you did or didn't testify to that? A. If I did I don't remember it.

Q. Did you testify the truth before Judge Horton?

Court: That is entirely improper.

Mr. Leibowitz: Exception.

Court: That is the very thing I have this jury here for.

The witness testified further:

I do not know how many stations I passed between Stevenson and Paint Rock. The train did not slow up at different times. It kept a steady speed until it got to Paint Rock. I do not know the speed of the train while this raping was going on. I don't know, I imagine about 35 miles an hour. I could tell by seeing the houses and trees go by me, how fast they were going. Kin'ly, that's my opinion about it.

The following then occurred:

Q. Mrs. Price, the way the houses passed, and the trees passed you, is that how you judged how fast the train was going? A. I didn't say I see'd the tops of the trees.

Q. Was it? A. I see's the tops of house.

Q. Did you see the tops while you were lying in the chert? A. No, while I was sitting down.

Q. When? A. In the gondola.

Q. That while you were being raped? A. No.

Q. The Judge asked you if you could tell the speed of the train while you were being raped? A. I said I couldn't tell, but I imagine it was about 35 miles.

Q. You couldn't tell the speed at all? A. I said I imagined it was that; that's what I said.

Q. After the first man got on top of you, he just had intercourse with you once? A. To the best of my recollection it was.

Q. It's not a question about your recollection, don't you remember? A. That's been too long ago to be positive.

Q. You don't remember whether the first man had intercourse with you more than once? A. I don't. I want to tell the truth about it.

Q. You have it, and you are going to stick to your statement?.

Court: That's improper.

The witness further testified:.

After he had intercourse with me he got off. After he had intercourse with me once he got off. I had my overalls pulled off, and my step-ins pulled apart. I had on my coat and my dresses. My hips were on my coat, and I was lying on my back. Part of the time it was and part of the time it wasn't. Part of the time that the intercourse was going on my coat was under my hips. That coat had a lining. Something like blue sateen. Something that white would show on. From the time I was attacked up until the time I reached Paint Rock I was not on my back all of the time. I didn't get up. A few minutes I was lying in Orville Gilley's lap, and he helped me to put my clothes on. I was on my back all the time until I reached Paint Rock, from a little while after I left, Stevenson, except while they was getting on. They had me kin'ly cater-cornered across; they didn't have me straight. I mean my legs were at an angle. From the minute I was knocked down and a negro got on top of me, I continued to lie there, I laid on my back until I got to Paint Rock. Gilley helped me pull up my clothes. I mentioned about Gilley putting on my clothes before Judge Horton. I kept my legs together so that the negroes couldn't get to me. I tried my best to resist. I tried to cross my

legs on top of each other, to lock them, lock my feet. One of the negroes pulled my legs apart with his hands and held them apart while another negro raped me, another negro had a knife at my throat. One held a knife at my throat and one held my legs, and while that was going on a third negro raped me. While being raped my legs were being held apart. I wouldn't be positive who was the first negro that raped me. It was not Patterson. I don't know if these negroes were wearing over-alls. I don't know if any of them were wearing dark clothes. I wouldn't say what they had on. I wouldn't say if any of them removed their trousers when they raped me. I wouldn't say I saw the private parts of either one, as fast as one got up another fellow got on. Very quickly, one after another. Six of them had intercourse with me. That intercourse started immediately after they knocked me down. I don't know if it took more than two or three minutes for each man. I don't know how long it takes a man to have intercourse with a woman, how long it took for six men to have intercourse. I don't know if it took an hour and a half. I don't know if any man had intercourse more than once.

I saw Gilley after the car left Stevenson. When the negroes begun to knock the white boys off, he got off, he hung on the stirrup. I didn't see that, I know that he didn't get off for he come back on.

The following then occurred:

Q. The things you have been telling us a lot of them that you have seen, you are just imagining them, aren't you, that is true, a lot of the things you have been telling us, you have been imagining, and you don't know of your own knowledge? A. I have been telling the truth.

Q. I didn't ask you that—you didn't see Gilley hanging on any stirrup did you? Will you answer that last question, please?

Court: Did you see Gilley hanging on the stirrup?

A. I told him, Judge, Your Honor, no, sir, twice.

Q. Did you see him later in the gondola? A. Yes, sir.

Q. Did you see how he got back on the gondola? A. I seen him crawling over in the gondola.

Q. Was that when the fight was going on? A. No, sir, that was while the raping was going on.

Q. What part of the gondola was he crawling into? A. The far end, next to the engine.

Q. You were on this end (indicating on minature train) on your back, being raped, and you claim that you saw Gilley coming over this side? (Indicating.)

Court: That's what she said. No need of going over that again.

Q. Did you testify before Judge Horton last Spring as follows (p. 56, Norris and Weems record)—will withdraw that. Your mind was more clear as to what happened, two years ago, than it is now, wasn't it? A. I don't know whether that question was asked me or not——

Q. Do you remember more of what happened two years ago than you remember now, that is according to your story, do you? A. Sure there's things I don't remember now what happened two years ago.

Q. I am going to read to you from your testimony two years ago, and ask you if you remember testifying to that in the Weems and Norris case, at Scottsboro? "Q. Do you know anything about where the train was when the last one of the six completed the intercourse with you? A. Yes, sir, about five minutes before the train stopped in Paint Rock; one of them negro boys had to make him get up.

Q. Did either one of these boys that ravished you have intercourse with you more than once? A. No.

Q. Just once each? A. Yes, sir."

Q. Do you remember saying that on the other trial? A. Judge, Your Honor, I haven't said they raped me twice.

Q. (By the Judge.) He is asking you whether or not he said that which he read to you, do you remember whether you said that or not? A. No, sir, I don't remember it.

Q. With reference to the blood on your back, were you asked these questions and make these answers before Judge Horton?

Mr. Knight: I object to that effort to extend the cross examination; it's an effort to impeach her on an immaterial matter.

Court: Let him ask it.

Q. On page 64, of that record, was this question asked you and did you make the answer? "Q. When you got to the jail did you find any blood on your back? A. A little bit." A. No, sir, I didn't; there was no blood on my back. If I did, I don't remember it.

Q. Now, as a result of this raping that you have testified about, did your private parts bleed? A. No, I don't reckon they did. If they did. I couldn't tell it.

Q. Did you testify before that when you got back to the jail you examined your private parts and found your private parts were bleeding as a result of that forcible intercourse, did you say that? A. I don't think I did.

Q. If you did say it, was it a fact?

Court: No, no, you needn't answer that.

Mr. Leibowitz: Exception.

Q. The first man that had intercourse with you, did he wet you? A. How could I tell.

Q. The second one, did he wet you? A. Sure he wet me.

Q. The first man wet you too? A. Sure.

Q. As these six men had intercourse with you, you became more and more wet, didn't you? A. Sure.

Q. Your private parts, and the clothes you were wearing, they became wet too?

Court: Do you know whether that is true or not?

A. Yes, sir.

Q. Your clothes becames saturated with semen, did they not? A. Yes, sir.

Q. What clothes do you mean? A. It was on my coat, the lining of my coat.

Q. What else? A. I don't remember, part of it was on my dress.

Q. All three dresses, were they wet after this intercourse had been completed? A. I didn't say that it was on all three of them.

Q. Was it on some of them? A. I said it might have been.

Q. How about your step-ins? A. They were torn apart.

Q. They were also wet? A. Yes, sir.

Q. Wet with the semen of the men? A. Yes, sir.

Q. Your shirt too? A. No, sir, it didn't get down that low.

Q. Was there also some blood on the step-ins? A. No, sir.

Q. About the blood from your private parts, did you testify in answer to questions before Judge Horton last Spring (I am reading from pages 65-66 of the record of the trial last Spring)—were these questions asked you, and did you answer them as follows: "Q. Were you bleeding from your private parts? A. A little bit." Did you say that?

Court: Did you say that, do you remember whether you said that or not?

A. No, sir, I don't remember.

Q. Then again (page 66 of same record) were you asked these questions and make these answers:

"Q. Did that blood come out of your clothes? A. Yes, sir.

"Q. Did the doctor see that, did you show it to the doctor? A. I reckon he did."

do you remember about that? A. I didn't have no such talk as that with any one.

The witness further testified:

When I got to Paint Rock, Orville Gilley pulled my overalls up while I was lying down. Negroes were around me at that time. Some one stopped Gilley from putting my overalls on for me. It was Haywood Patterson; no, he said they were going to take us north and make us their women. I told you Haywood Patterson pulled Gilley away. He did not knock Gilley on the head. None of the other colored boys helped Patterson pull Gilley away, not as I remember. Gilley did not get away from Patterson and then put my overalls on for me. No, he asked them to let me alone. I was nearly dead anyway. Then they let me alone. He (Gilley) pulled my overalls on while I was lying down. Haywood Patterson was sitting on the overalls towards the front of the gondolier. I could see way over to that place. Sure I could, I wasn't blind. I was on my back, but my head could move. The negroes that wasn't raping me they were standing there looking on, around where the raping was going on, pretty close; about where Orville was before they let him come to me I never no more than got on my overalls until the train stopped, got them on and my coat fixed and beated up. I did not see these men at Paint Rock, at the time the train got there, the sheriff's men, the posse. I was lying down until about five minutes before the train stopped. Five minutes before the train got into Paint Rock, I did not get up. I was lying on my back in the train until the train actually stopped, except I was kin'ly turned over a little bit on the chert.

It was at Paint Rock that I got up, the train had stopped. That is the time that I first saw the men that met the train. I did not call out to the men. They were white men. When the train stopped, the negroes began to run. Running towards the engine. All of them left the car that I was in at Paint Rock and going towards the engine, or running towards the engine. So that the twelve men, twelve or nine, got over into the next gondola. They were going over some cars from gondola to gondola. I don't know; they finally ran to where they came to a box car; all I know is that they ran toward the engine. I don't remember how many cars they crossed. That left me and Ruby Bates and Orville. Orville got out of the gondola when the train stopped, this gondola that I was in. Orville Gilley got off, and then Ruby Bates got off. Then I fell off. I fell off after I started to get off. I and Ruby Batts, when we saw some white men, or the sheriff's men, did not go towards the engine, and then turn around and start to run away from the white men. My foot lost the stirrup and I fell and didn't know any more then until I came to at the store. I don't know how far it is from the stirrup of the gondola to the ground. I don't know if I landed on my feet; I didn't come to myself until I was in the store at Paint Rock. After I fell I don't remember nothing until I come to myself in that store at Paint Rock. At the store in Paint Rock I talked to somebody after I come to myself. I was immediately carried in an automobile to Scottsboro with Ruby Bates, to the hospital. The doctor examined me in the hospital, the hospital room. I talked to the doctor. I remember Dr. Bridges and Dr. Lynch. He wanted to examine me, asked me to undress. I did not refuse to undress. I did not refuse to follow the doctor's directions that he gave me. I did not refuse to answer his questions. I did not refuse to co-operate with him. When I got into the doctor's office, I did not have on the same clothes I had on when I got off the train at Paint Rock. I didn't have on my overalls. I took them off at Scottsboro in the hospital

room. I did not take them off in the presence of the doctor. I did have my coat on and the dresses and the shirt and the step-ins, my shoes, stockings and hat. My hat was knocked off, during this raping business. I got it myself out of the gondola right beside me. I don't know whether I did or did not lose my snuff box. I never did look for it. The last time I had it was in Chattanooga.

The doctor examined me. I don't chink he did examine my clothes; I am not positive whether he did or not; I am not positive; I don't think he did. Nothing had been done to my clothes; they hadn't cleaned my clothes. My clothes were in the same condition as they were at Paint Rock except the overalls. I left them at Scottsboro. I didn't take any clothes off, not over at the doctor's office. The doctor examined all over me. He examined my body. I had my clothes off then. The preliminary examination he gave us was in the hospital room. I had my clothes on at any time when Dr. Bridges took us over to his office. I don't remember whether I wore my coat to the doctor's office or not. I had my dresses on that had some of that semen on, at that time. My private parts were not all wet with the semen that these negroes had been discharging. My legs wasn't all wet after the negroes had finished with me. They were a little bit wet around my private parts, in between the thighs, kin'ly sticky wet. It was not wet enough so it could be seen. Of course I rubbed myself a little and urinated before I went to the doctor's office. Some of it was still there, there was enough for him to tell it all right.

(At this point court recessed until 8:30 A. M. November 28, 1933, at which time the cross examination of Mrs. Virginia Price was resumed.)

In the doctor's office I had marks on my face in addition to the cut I had above the eyebrow. I had a kinder scratch up over my eye. I had marks on my throat right up there (indicating place on her throat). I had some bruised places on my face. I can't exactly point them

out, but scattered over my face, bruised places. There were a few, I wouldn't say how many. My nose was bruised too, kin'ly. The skin on my nose was bruised and swollen a little bit, swollen so that if I touched it, it hurt me. My lips were not bleeding, but swollen a little bit, so that any one looking at me could see it. When I looked at myself in a mirror later, I saw my lips were bruised on the inside. I could see that they were bleeding some on the inside, a cut inside of my cheek where I was punched or struck. I got the bruises on my lips from the punches I got from the negroes when I was trying to resist them. They applied force to my face and gave me these bruises. Below the neck of my dress, about the upper part of my body, I had four or five scratches on my right breast, or left, I forget which, one or the other, and I had spots all over my body, several of them. There were other places where I was bruised up, besides these bruises, bruises visible to the eye. There was no place where the skin was torn, not on my body, not as I seen. I had a few small bruises on my stomach to the best of my remembrance. They were bruises that I could later see. I had bruises on my legs too, on the front part of my legs. I never paid any attention to any scratches or tears; might have been, I don't remember. I wouldn't say I had any bruises on my ankles, where they grabbed me by my feet. My ankles were sore and swollen, they started to swell the next day. They were tender the next day when I went to the doctor's office. When I went to the doctor's office the next day, when my ankles were touched they did not pain me, but were tender to the touch.

When I got to the Scottsboro jail, I remained in the yard of the jail or in front of the jail for a few minutes, while the negroes were being brought in. They got there about the same time I did. I don't know whether the white boys got there before, at or about the same time. I didn't see them for a good bit. I didn't see none but Orville Gilley. When I arrived to the jail yard in the car with Ruby Bates, I did not beckon to either one of

the white boys to come over to my car. I did not say to one of the white boys there in the jail yard, "I want you to tell that you are my brother". I did not say, "Because if you don't tell them that, we will all be arrested for crossing the state line". Absolutely I did not. This hospital that I was telling the judge and jury about yesterday—that ain't no main hospital. It is in the jail—a hospital room. When I got into this jail itself, I was taken very shortly afterwards into this hospital room. Dr. Bridges and Dr. Lynch come up after I was in there. When I was lying on chert in that gondola car, the back of my head came in contact with the chert. My hair was on the chert. Part of the time my hat was off—it was pushed off. And the hair of my head came in contact with the chert—but my hair was long. I did not have long hair. It was a shoulder bob. My hair protected my neck behind. My hair came in contact with the chert. That was fine chert. Kin'ly fine. I never paid any attention to the size. When I walked over the chert, it was not soft enough so that it would give way underneath my feet. I washed my head afterwards. I took a bath in jail. I found dust of the chert in my hair. I took a bath, and my head was dirty. I couldn't tell if it was gray dust in the water, it was a shower bath. The chert was a light color, I wouldn't say gray. I had dust on my face, kin'ly before I washed. When I got into the hospital room, or the doctor's office, and the doctor made a complete examination of me, he examined my head, and my body, all over. No, I will take that back, he examined my body, and when I got to his office he examined the rest of me from the waist down. He examined me from the waist up in the hospital room, and when we got to his office he examined me again. In the two examination he covered, once from the waist up and once from the waist down. He did examine my entire body in these two times. I showed him the places, the bruised places where I had been injured. I told him to examine my hips that I

was hurting. I did not show him the other portions I referred to in answers to the questions, that had been injured. He found them himself, except my hips, and I told him to examine my hips. I did not see whether the doctor did any writing as to the result of his examination. I was lying down. I didn't pay any attention. I answered the questions the doctor asked me the best I knew how. All of them the best I knew how. When I got to the jail I was crying but not when I got to the doctor's office. I was not excited when I got to the doctor's office I was quiet.

The following then occurred:

Q. You were asked that same question on the last trial here before Judge Horton, whether you were crying when you got to the doctor's office? A. I don't remember it.

Q. On page 65 of that record, wasn't you asked this question and make this answer: "Q. When you got to the doctor's office you were not crying in any way? A. To the best of my judgment I was crying"—did you testify that?

Mr. Knight: I object to that examination along this line, it's an effort to impeach her on a wholly immaterial point.

Court: It looks that way, but I will give him the benefit of it.

Mr. Leibowitz: I object to the court's remark, the court's statement.

Court: Then don't do things like that.

Mr. Leibowitz: I want to preserve my rights on the record. Will you give me a blanket objection to the remarks of the court?

Court: No, I won't do that.

Mr. Leibowitz: Then I object to it.

Court: All right, and I'll give you an exception. Proceed.

Q. Did you say that before Judge Horton last spring? A. I don't remember.

Q. Which is a fact—that you were crying or that you were not? A. To the best of my judgment I wasn't crying.

The witness further testified:

I saw Mr. Bailey, the solicitor for the first time at the court house. After I got to the Scottsboro jail there was several in there talking to me. I didn't know him at that time. My best recollection as to when I first saw Mr. Bailey is, it was in the court house. I wouldn't say how long it was after I got to Scottsboro. It was a couple of days later maybe a week, to the best of my knowledge. To the best of my judgment. I may have seen him before that. I might have spoken to Mr. Bailey the same day or night but I didn't know him. I didn't know anyone in Scottsboro. I did speak to the sheriff the same day I got there, Sheriff Wann. I did not show him the places that I have described to the court and jury.

The following then occurred:

Q. You attended the trials and were a witness in the cases at Scottsboro? A. Yes, sir.

Q. Did you undertake to exhibit in any trial, in any of the four trials at Scottsboro, any of the places you have testified about?

Mr. Knight: We object to that. Sustained.

Q. The wounds and the garments— A. I didn't show anything.

Q. Wait a minute, please, was any of the garments showing any of the semen that you claim was put on them in this gondola car——

Mr. Knight: We object to that. Sustained.

Mr. Leibowitz: We reserve an exception.

Q. Did you have with you in the Scottsboro court room, or have in your possession any of the garments that have been referred to as having semen on them?

Mr. Knight: We object to that. Sustained.

Mr. Leibowitz: Exception.

Q. What happened to the coat after you got to the Scottsboro jail, who took charge of that? A. To the best of my recollection, Charles Simmons did, and took it to the laundry.

Q. Charles who? A. Charles Simmons.

Q. Who is he? A. He is the sheriff there, one of the deputies.

Q. Did you give him the coat? A. No, sir.

Q. Did you see him take your coat? A. He took mine and Ruby Bates and took them to the laundry.

Q. Who took charge of your dresses? A. We did ourselves. We pulled them off and washed them.

Q. Who took charge of your undergarments? A. I kept them.

Q. Did you at any time while in Scottsboro show to any jury there any garment that you had worn on this occasion? A. My step-ins were shown in court.

Mr. Knight: I don't think that is proper, what was done in court, we object.

Court: I sustain the objection, that involves trying that over again. That part, what she did at the trial is excluded. Of course you may show that she showed it to somebody else.

Mr. Leibowitz: I respectfully except. May I propound this question, I want to obey your Honor's ruling—don't answer until his Honor has ruled.

Q. At which trial was it that you exhibited your step-ins to the jury?

Court: I just this moment ruled she couldn't answer that.

Mr. Leibowitz: She just this moment said that she showed them——

Court: And I just ruled that it was improper.

Mr. Leibowitz: I am not going to engage in any argument——

Court: That will do; proceed.

Mr. Leibowitz: I respectfully except.

Court: Go ahead.

Q. Did you a moment ago say that your step-ins were exhibited in court, did you say that a minute ago? A. Yes, sir, they were shown in court.

Q. Which trial was it that the step-ins were shown in court? A. It was the first trial at Scottsboro.

Q. That was on the trial of Heywood Patterson? A. I don't know which one they was trying.

The witness further testified:

I did not observe any bruises or marks on the face of Ruby Bates. I didn't pay any attention to her. I didn't notice any bruises on Ruby Bates in the doctor's office. If I did I don't remember it. Ruby Bates was not crying in the doctor's office; not as I remember, she wasn't.

Yesterday I saw Attorney General Knight and speak to him. Orville Gilley was with me, over in General Knight's apartment at the Cornelian Court— I saw Orville Gilley occasionally, off and on, right after Judge Horton's trial. I don't recall was it after that trial that I first saw him. It was a couple of weeks afterwards. I saw him at my home. He came to my home in Huntsville. He did not come there with anybody. I do not know Mr. McClung, an investigator for Mr. Knight. That short gentleman over there, Mr. Knight's assistant, I have seen him. Gilley did not come at any time to my home with that short gentleman. He did not come

all alone. He didn't stay at my home. I did not see him the day after that. I seen him one day. That was not the only time that he came to my home; he came there several times, since the last trial was here before Judge Horton. He at no time came to my home with anybody. I didn't see him at my home half a dozen times, nor three or four times; a couple of times, two or three times. I invited him to come again. Sure, when he left I would tell him to come back. He and I wasn't friends or sweethearts in any way. There was nothing between me and him, except that he would stop by and see me. I did not discuss with Gilley the different phases of the case, what happened, and so on. I asked him why he didn't appear at the trial. I said nothing about what happened on the train; nothing like that were mentioned. Not a single word about what happened on the train. I, together with Gilley, saw Mr. Knight before yesterday, on some other occasion. Me and Orville Gilley have been in Mr. Knight's company twice, and again yesterday. I don't remember how long it has been before yesterday. It's been a couple of weeks. I seen him at Huntsville. At my home; that's my home. No, I don't reckon Mr. Gilley was there. When Mr. Knight saw me and Gilley together that was not in Huntsville. I saw Gilley in Huntsville. I didn't say him and Gilley was together. I and Gilley saw Mr. Knight before yesterday. To the best of my knowledge it was in the Tennessee Valley Bank Building—in the court house in Huntsville. That was not by appointment. Nobody told me to go to the Tennessee Valley Bank Building. I went up there with somebody. I don't remember who it was, that I went there with. It was not Mr. Taylor. I won't be sure that I can tell you how I came to go to this place where I met Mr. Knight, what brought me there, when I saw Gilley there, too. I went up in there. Nobody told me to go there. Nobody told me Mr. Knight was going to be there. Nobody told me Gilley was going to be

there. I don't remember whether or not I had been there before. I don't remember whether court was going on at Huntsville or not. I was up there to see somebody. I don't remember who it was. As far as Mr. Knight is concerned, it was probably an understanding I was to meet him there. I am not positive how come me there. I wouldn't say how come me there. Outside of these two times, I did not see Mr. Knight and Gilley at all. I did not see Mr. Knight and Mr. Gilley by accident in the Tennessee Valley Bank Building. I said courthouse.

The following then occurred:

Q. Did you and Mr. Knight and Gilley sit down some place in that building and talk about the facts of the case? A. I don't remember what we talked about, now.

Q. Did you talk about anything.

Court: If you desire to lay a predicate, you are at liberty to do so, but going just at random like that, I don't think that is the proper way to get at it.

Mr. Leibowitz: Very well, your Honor, we except.

Q. I want to know if the facts of the case were discussed in your presence by Gilley? A. I didn't hear him.

Q. Did he speak, in your presence, to Mr. Knight, up there? A. Yes, sir.

Q. About the case? A. No, not in my presence.

Q. Did you receive any mail from Mr. Knight telling you to be at the court house? A. No, sir, I did not.

Q. Did Mr. Knight send any messenger instructing you to go to this place?

Court: I think that's all useless.

Mr. Leibowitz: Exception.

The witness testified further:

I have never been in Montgomery. At no time, did Gilley tell the story that related to the facts as I claim them, in my presence. I haven't heard him if he did. I talked to Gilley in the jail at Scottsboro. I did not talk about the case to him. I did not tell Gilley that if he didn't take the stand and say that he saw me being raped that the solicitor would not use him as a witness. I did not say to Gilley that I would have him removed from the stand if he didn't tell the story as I wanted it told. I don't remember whether Gilley testified on the first trial of Patterson. That is my best answer. I have not talked to any newspaper men about this case, and told my story to any newspaper man since this happened. I did testify before Judge Horton that I spoke to the newspaper men. Yes, sir, I have spoken to them. I did not speak to them about the case, telling them the story as to what I claim happened.

(A colored man, Dallas Ramsey, came into the court room.) I have never in my life ever seen that man. While I was in the Scottsboro jail, I did not receive any letters that I read out to Lester Carter, from a man in Chattanooga that I knew by the name of "Red".

Re-direct Examination:

I go by the name, and only by the name of Victoria Price in Huntsville and community. I went by that name, and was known by that name in 1931 in Huntsville and in the community surrounding Huntsville.

Re-cross examination:

Can you give any reason why, you, a married woman, married to two men at different times, should refuse to bear the name of your husbands—let me put the question so you will understand it: Can you give

these twelve men any good reason why, as a lawfully married woman, married twice, should refuse, in each instance, to bear the name of your lawful husbands, right in the very town where you lived—can you give any good reason for that?

Mr. Knight: We object to that. Sustained.
Mr. Leibowitz: Exception.

W. H. HILL, sworn for the State testified:

Direct examination:

In March 1931, I was the depot agent for the Southern Railroad at Point Rock, Alabama. I recall the time that a freight train stopped there and some negroes were taken off of it. That train reached Point Rock between one and two o'clock. I was at the station when the train pulled up. The train stopped there. That was a freight train. I saw some negroes on that train. When I first saw them, they were on a coal car, six or eight car lengths from the engine. It was what we call a chatt car. These boys when I saw them were around the edges of the car. They were making efforts to get off. The car was about two-third full and you could see their heads up over the sides of the car; some of them were attempting to get off as they passed the depot. I saw them get out of the car when the train stopped. There was a crowd around them that took charge of them. The officers. I didn't see any of them jump off until the car stopped. When the car came to a stand-still I was near the depot, and I ran down that way, and by the time I got there, they had the girls off of the car. The girls when I first saw them were right at the ladder that is at the side of the car, on the ground. I saw two. I would know them if I saw them now. I have seen Mrs.

Price here. Mrs. Price was one of them. When I first saw her there at the side of the car, she appeared to be in a faint; the other girl was supporting her. The last time I saw them they had passed across the track towards a shade tree, and saw them carrying Victoria up in town in a chair. Her appearance when I saw her in the chair was still apparently in a faint.

The following then occurred:

Q. Did you hear these women, either one or both, make any complaint as to their treatment on that train?

Mr. Leibowitz: I object to that. Overruled.
Mr. Leibowitz: Exception.

A. Yes, sir.

Q. Which one was that? A. Ruby Bates.

Q. Did you hear Mrs. Price say anything about it? A. No, sir.

Q. Were you up at the store and hear them do any talking, did you go up to them at the shade tree? A. It was right when they got off the car.

Q. Did you get to the shade tree where they were seated? A. No, sir, I didn't go there.

Cross Examination:

This photograph, is it a true and correct representation of the railroad just before you come around the bend, as you come into the station at Paint Rock, coming from Stevenson towards Paint Rock? That is just before you run into the station. If you look closely here you can see the station through the telegraph poles. (The photograph was marked in evidence as Exhibit 1 to the testimony of Mr. Hill.) Now as you come around the band, that's a correct picture.

(This photograph was marked Exhibit "2" to the tes-

timony of Mr. Hill.) As you get still nearer the station that is a true picture of what you see there, that is not the same depot though as it was when this occurred. The station though is in the same place.

(This picture was marked as Exhibit No. 3, to the testimony of Mr. Hill.) This is still another picture, showing a closer view. That's a true picture from the station to the coal chute. And the water tank there.

(That photograph was marked as Exhibit 4 to Mr. Hill's testimony.)

This last picture is a true picture looking in the opposite direction, from Paint Rock towards Stevenson.

(Photograph marked as Exhibit No. 5 to Mr. Hill's testimony.)

I have myself been on a freight train over that portion of the road. I have ridden many times up and down the road in my years of experience as a railroad man. I have been connected with the railroad down there at Paint Rock all my life. I am familiar with the operation of railroads and different cars, and all that kind of business. I don't remember ever riding a gondola. I have ridden on freight trains, in the caboose and on the engine. I never did ride in the freight cars. I never roughed it on the trains. I have seen all kinds of trains come around that curve into my home station. This is a pretty good representation of gondola cars on the railroad (indicating miniature train). That is a pretty good representation of a box car. This kind of car (indicating another car on miniature train) is called a hopper.

The following then occurred:

Mr. Leibowitz: Is there any dispute about this miniature train being a fairly good representation of the cars in the train in question?

Mr. Knight: None whatsoever. There is one thing I would like to have cleared in my mind though is this, did the gondolas which were on the train more nearly resemble this type of car, or the type which Mr. Leibowitz pointed out? I would like to know, Mr. Hill, whether the gondolas you spoke of having seen the girls get out of more nearly resembled this car of the hopper type, or these (indicating several gondolas together)?

Witness: They resembled this.

Mr. Knight: This series of eight cars right here (indicating the several gondolas together).

Witness: Yes, sir.

Q. You indicated the red cars? A. Yes, sir.

The witness testified further:

You come around that curve there coming into Paint Rock. You can see the train approach a quarter of a mile around the curve. You can not see through the trees around the country side but you can see the train as it turns the curve. You can't see the train, when standing at the depot, until it comes around a part of the curve. The engineer blows his whistle when he comes around that point coming into Paint Rock. He is required by the rules of the road to do that. I don't remember hearing the whistle of this train blow as he came around that curve. It is an invariable rule. When the train hits the curve it usually begins slowing down. Each one of these cars is about forty feet in length; thirty-six to forty feet. In between these cars, the space where the coupling is, is hardly three or four feet. Something like two feet; it depends on the cars. There are no platforms. There are platforms on these oil tank cars. From where the station was up to the water tank is something like 200 feet, probably a little more. The engine don't stop at the water tank. It stops at the

coal chute. The water tank is something like 200 feet, and the coal chute is something like 200 feet beyond that, I guess somewhere about 400 feet to the coal chute going west. The coal chute is on this si· of Paint Rock, west of the depot. That curve is east of the depot and the coal is 400 feet west of the depot as it was on the day this happened. There was twelve or fourteen cars between the depot and the coal chute. One coal car was six or eight cars from the engine. I don't know what car was opposite the station. I don't know that. When the train come to a stop I left the train and started towards the coal chute. I traveled towards the coal chute about even with the water tank, that is, about 200 feet. There was only about 200 feet between me and the coal chute where I stopped there, so this car that the women were standing near, and where these negroes got off, was about 200 feet from that coal chute, between 200 and 350 feet. My recollection is that it was more than three or four cars that I saw the negroes. I am not sure about that. Something like six cars, I think, but I am not sure about that. I don't know the exact length of the engine. The coal is taken into the tender. That is back of the engine. The railroad stations between Stevenson and Paint Rock are Fackler, Hollywood, Scottsboro, Larkinsville, Limrock, Woodville and then Paint Rock. I am acquainted with the different station masters all along the line. These stations are open usually from eight to five. Somebody is supposed to be in attendance all the time. I know who the various station agents are supposed to be. Scottsboro has two men. The others just have one man. Records are kept at the stations of the passage of trains at the telegraph offices. Some of these stations are not telegraph offices. Hollywood, Scottsboro and Larkinsville have telegraph offices. At these offices, the man at such offices he looks out and notes the passage of trains. This was a fair day in the early spring. Some-

times crowds congregate around these stations along the line. If you were riding from Stevenson down to Paint Rock, you are bound to find some men around some of these stations as a passenger train passes by. That was a through freight, and you wouldn't likely find many gathered around the stations.

I have the exact minute at the office when the train arrived at Paint Rock. I haven't got it here, but it was around 1:50, I think, or 2:00 o'clock when it reached Paint Rock. It is 38 miles between Paint Rock and Stevenson. It usually takes a through freight train, after it leaves Stevenson, to get to Paint Rock from an hour to an hour and ten minutes. I know Mr. Turner that was the conductor on this train. I have known him several years. I do not know a negro man named Percy Ricks, who was the fireman. I have probably seen him, but I don't know him by name. I don't remember seeing him on that day. I remember the brakeman. Roscoe Allen was the brakeman. He is here in court. I saw him this morning in the jury room. I may have seen Mr. Turner as he passed; I don't remember seeing him, in particular.

I have seen persons unconscious, a person in a faint that falls to the ground. Ruby Bates had her arms under Victoria Price's arms. Yes, sir, I am sure of it. I didn't see Victoria Price lying on the ground at any time. I don't recall that Ruby Bates was much slenderer. In fact I had never seen them before that day. I saw the faces of those girls. I did not notice any marks or cuts on the face of Victoria Price. I didn't examine her any. I was no closer to her than I am to you. I did not notice any bruises on her face. No cuts or wounds on her forehead. No blood on her at all. Her face was smeared up with coal dust; some kind of dust on her fact. I did not see any blood coming from her lips. I didn't notice any swollen lips or anything of that kind.

The following then occurred:

Q. Did she have on a coat? A. She had on overalls.

Q. She didn't have on a coat, did she? A. I don't think she did. They were dressed in overalls, at least.

Q. Both girls had on overalls? A. Yes, sir.

Q. But no coats? A. I wouldn't be positive about the coats.

Q. At least, you didn't see any coats? A. I didn't notice any coats.

Q. You didn't notice any coats with fur on them? A. No, sir.

Court: He has said he didn't notice that particular situation.

The witness testified further:

I did not see all of these negroes get off that car. I couldn't say that I saw them all get off. I saw some of them get off that car. I saw that while I was running from the station towards the coal chute. At the time they came by my station some were on the tops of the cars. The chat car they were in. I didn't see some fellow pull them off, even before the train stopped at the coal chute. The train was not going so slow when it passed my station, but it had slacked up though. There were men with guns around there. Fifty or sixty. Men were lined up clear up to the curve. They were past the depot. They were scattered along on each side. I don't recall what kind of guns they had; most of them had guns, a good many of them. I saw the train actually come around the curve. As the train hove into view around that curve while I was at my station, I did not observe any of these negroes on any part of that train, scampering to get off the train. I didn't see any negroes except on that one car. They were on top of the car as if they were in an effort to get off. I did not see any

actually jump off before they got to the station. I did not walk along this train later looking at the box cars on the train, on both sides. The train pulled out quickly. It only stayed there five minutes. I did not see any negroes on top of the box cars.

The following then occurred:

Q. I want to ask you this question for the purpose of refreshing your recollection, the last time, when you testified before Judge Horton, I am going to read you two questions and answers, at page 216 of the record of the last trial: "Q. You claim all the negroes got off that car? A. The ones that were arrested got off. Q. All of them off that one car? A. Yes, sir." Do you remember testifying that before Judge Horton? A. Yes, sir, I think that is what I said.

Q. Is that the fact? A. I think that is what I said.

Q. That is, all of the negroes that were arrested at Paint Rock got off that one car, as you testified before Judge Horton? A. As far as I know they did. If any got off any other car I didn't see it.

The witness further testified:

I never testified at any of the trials at Scottsboro. I didn't become a witness in this case until last Spring before Judge Horton,—that is the first time I testified.

Redirect Examination:

I am acquainted with the territory that is traversed by the Southern Railroad between Stevenson and Paint Rock. All of that territory is in Jackson County, Ala. The first time I saw the girls they were standing on the ground by the side of the car. That was the same car that I saw these negroes on when the train came to a stop. Before this train arrived at Paint Rock on that day I had not received an order to stop that train at Paint Rock. The train was due to stop there.

TOM TAYLOR ROUSSEAU, sworn for the State, testified:

Direct Examination:

My name is Tom Taylor Rousseau. I live at Paint Rock, and was living there in March, 1931. I was down there at the depot at Paint Rock, Alabama, on March 25th, 1931, when a freight train stopped there. I saw some negroes on or about that freight train when it pulled up. The first I saw of them they were getting out of this gondola car as the train pulled into Paint Rock. I saw this negro Heywood Patterson with these negroes that got out of this gondola car. I think he was getting out of the gondola car. We took off nine.

I didn't see any women at the time. I did see women later. Down outside the car, on the depot platform on the gravel I saw two white women. When I seen them a couple of men had her in a chair and she was unconscious, I reckon. I guess I was close enough to her head to lean over her face.

Mr. Leibowitz moved to strike out that she was unconscious. The Court overruled the objection, stating: He said: she appeared to be unconscious. Mr. Leibowitz excepted.

The state solicitor asked the witness as follows:

Q. Did you hear these women, either one or both of them make any complaint about what happened on the freight train?

Mr. Leibowitz objected. The Court overruled the objection. Mr. Leibowitz excepted. The witness answered: No, sir, I didn't hear them say anything at all.

The witness testified further: They carried her up into the street by that little path that goes up into Paint Rock, up there in front of one of the stores is

the last time I saw them. We held the negroes until the law come there with a truck and we loaded them on.

Cross Examination:

These negroes were in a gondola car south of the station. The tracks run north and south there; it makes a curve there and runs north and south. The train was coming from Stevenson towards Paint Rock. When I first saw the negroes they they had not reached the station. The engine stopped at the coal chute. I don't know about it after it stopped, because this crowd was trying to get off, and I ran towards the coal chute.

I was not standing at the coal chute. I don't know how far away I was, somewhere between the depot and the coal chute. I was aboye the water tank, somewhere in betwen the water tank and the coal chute. The coal chute was about 200 feet from the water tank. And the coal chute was about 400 feet from the station. I was anywhere from a hundred feet up to the engine. I don't know how far from where I was standing the nearest gondola was, after the train came to a stop. I didn't pay any attention to that. After we took them off, we left the railroad tracks.

I was on the left side looking towards Stevenson. I was on the east side of the train, the way the track runs there. I was looking towards the engine. I would be on the left side facing Huntsville,—and the right side facing Stevenson. Some got off on one side, and some on the other. Three or four got off on the side I was on. I don't know anything about what happened on the other side. All I can testify is that three or four of the negroes got off on the side I was on. That's all I know about it. That's all I know anything about.

I never saw any women until I saw two women sitting on the platform on the side of the road. They were right there at the car the first time I saw them. I was a witness at Scottsboro and testified in each of the four trials. These men were tried in different batches in Scottsboro.

The following then occurred:

Q. I am going to call your attention to your testimony that you gave on the trial of the five negroes, Powell, Robertson, Wright, Montgomery and Williams, reading from page 31 of that record as follows:

"Q. Did you see some women there? A. Yes, sir.

Q. Where were they when you first saw them? A. They were in the back end of the same car.

Q. Did you see them when they were in the car? A. The women?

Q. Yes. A. Yes, sir."

Do you remember stating that in Scottsboro when you testified? A. No, sir, not that way.

LUTHER MORRIS, sworn for the state, testified:

Direct Examination:

On March 25, 1931 I lived a mile and a half west of Stevenson in Jackson County. That is going from Stevenson towards Paint Rock near the railroad track of the Southern Railway. I own a house on each side of the railroad, also a barn about 400 yards from where I live. About one o'clock that day I was out in the barn loft on the second floor. I never measured the distance from the railroad fence, from the right of way fence it is about fifty feet. I saw a freight train pass there going in the direction of Paint Rock between twelve and one o'clock. I was in the barn loft at the time it passed. I saw someone on that train on a gondola car.

I looked out, and it looked to me like there was between seven and eight negroes, and five or six white boys, and these negroes were putting the white boys off, or rather knocked or throwed them off.

Mr. Leibowitz moved to exclude that statement.

The Court asked the witness: Did you see them

while they were doing it? and the witness answered: Yes, sir, absolutely. The Court overruled the motion and Mr. Leibowitz excepted.

The witness testified further:

I saw two girls in that car. They were in the bottom or close to the bottom; I could only see their heads. I could see west, the way the train was traveling, a mile towards Paint Rock. After the train passed I saw three of the white boys along the right of way. They were all bruised up, when they jumped off. I saw them jump off. The negroes made them jump off. One of them jumped off even with the crossing, right even with the house; from the crossing to the barn is angling and is about 140 feet, around 140 feet. I saw the others jump off down there at the switch of the storage track west of my barn. After they jumped off they went back towards Stevenson. They were a mile and a half from the crossing right near my barn there to Stevenson. I saw three go towards Stevenson, but I understood there was more. I saw bruises or blood on them. Right at the crossing there, there was a block where the sewer is through the drain, and there was some blood that stayed there at least sixty days. I saw blood on them, On the heads. Only two of them I seen blood on.

Cross Examination:

Looking at a barn on a photograph, that is my barn. I see this crossing on this photograph on that railroad track. I see that car on that track. That is the track nearest my barn. That is not the type of car that is known as a gondola car. I don't know exactly what you call this car here. (Looking at another picture) that is not a gondola. I don't know what type of car that is. I am no railroader. I do know what a gondola is. I know box cars, refrigerator cars, and such as that. I can't tell the type of car shown on this photograph—

this car right on this picture, just opposite my barn. I can't say if it is higher than the sides, higher than that or lower than that.

That is not a window I have up there in my barn, it is a door. A sort of opening. This does not show how you could look out that opening. That is not the view you get of it, the opening in my barn. Looking out of there, you look towards Paint Rock. You can get a little better view than looking into the woods. That is not a correct view, or a portion of the view, that is shown in that picture, looking out through that opening in my barn, these very woods shown on that picture I see there, and the track, and the telephone pole and every thing. Well, that is a little better than the one I looked at. No, that ain't a true picture. I don't understand the picture; all I understand is what I could see from the barn. I can't tell much about pictures. There is an embankment on the railroad track down here, a very small one, yes, sir. That is a small one, six or eight feet. This has the appearance of a very good picture. That is the way the railroad track was with reference to my barn, leaving the car out of consideration. That is another view of the same thing, forgetting about the car. And that too.

(These pictures were marked in evidence as Exhibits Nos. 8, 9 and 10 to defendant's testimony.)

The witness was asked to look at the pictures and he put on glasses.

The witness further testified:

The opening is right down here, you don't have that. Right here is the hall of the barn we drive in at, and at the back end, the rear end of the barn there is a door facing the west. That is where I was looking out of. I was up there repairing the loft; repairing the barn, driving nails and repairing. Nailing planks on the floor of

the barn loft, on top of the first story. I was laying new boards in the barn loft, that is the first story, laying them down on the sills. I was nailing boards down. I was not on my hands and knees or stooped over. I was stooped down, stooped over, not down. I was not wearing glasses. I wear glasses to read with.

The following then occurred;

Q. When you sit by your fireside to read? A. I have got good hearing——

Q. I asked about your vision——

Court: Can you see well?

Witness: I can see a long distance, but not to read.

Q. Is your trouble nearsightedness, or vice-versa?

Court: I imagine this witness wouldn't know what you mean. Get down to something he can understand.

Q. When did you go to wearing glasses? A. About two years ago.

Q. Before this happened? A. Yes, sir.

Q. How long before it happened? A. About two years.

Q. A year before this happened? A. Two years ago is when I commenced wearing glasses.

Court: He wants to know if you were wearing glasses at the time of this occurrence?

Witness: No, sir.

Court Have you been wearing them?

Witness: No, sir.

Court: You commenced after that?

Witness: Yes, sir.

Q. How soon after this happened before you started wearing glasses?

Court: I think that is taking up time for nothing. You can have an exception and go on to something else.

Q. Did you get glasses because you couldn't see well? A. I was running a saw mill——

Court: Mr. Morris, what he wants to know is, if your eyes got bad soon after this happened so that you had to get——

Witness: That was enough to make anybody—

Court: Don't answer so quick please, just pay attention to the question.

Q. (Read by the reporter.) Mr. Morris what we want to know is if your eyes got bad soon after this happened so that you had to get glasses? A. Yes, sir, I have done told him that.

Q. So that you couldn't see a long distance without glasses? A. Yes, I can see at a distance.

Q. I am asking you, the reason why you got glasses was because you had trouble seeing any distance, right after this thing happened? A. I can see for a distance, and could see for a distance at the time this happened.

Court: Did you use your glasses for reading and looking at things close?

Witness: I use glasses for reading or something like that is all.

Court: That looks like enough on the glasses.

The witness testified further:

I heard the train and I heard a racket, screaming and hollering. I always stop and look out at a train, I have lived there since 1914. Every time a freight

train passes, I stop and look at it. If I am on the road I do. I watch the whole train pass. This train was coming at me, towards me. I saw the engine. It was not a very long train. There was over ten cars, I think. It looked to me to be about eighteen or twenty, or twenty-five and maybe more. I don't know how many cars it had. I saw the engine when it passed by. When the engine got by. I saw negroes in that car——

The Court interrupted to ask: At the time you saw the engine and the Witness answered, No, sir.

The witness testified further:

I could not see any negroes on the train when the tender was passing my barn. I didn't count the cars; it was very close to the engine. May have been four or five cars, or maybe more than that. The train didn't have a hundred. I didn't count how many cars passed by barn at the time saw the negroes. I didn't figure over two or three, but of course I didn't count them. I heard the racket. Just as soon as the train passed my barn I could lean over and stick my head out, and could see what was taking place. The train was making a noise chugging along. The box cars and the other cars rattled along, the train rattled and make a clicking noise. I don't believe over two cars had passed my barn when I first saw the negroes. It was at that time that I observed the negroes. I can't tell you whether at that time the negroes were at least seven hundred feet away when I claim that I saw them, in other words, thirteen or fourteen cars away. I didn't count the cars, I could tell that they were negroes.

The following then occurred:

Q. As a matter of fact Mr. Morris are not the tops of the gondola cars, as they pass your barn in a train, higher than the opening in the barn through which you were looking isn't it a fact that all you could see was the side of the gondola cars, because the side of the

car was higher than the level of your barn? A. I could see the scrimmage going on. I saw the negroes.

Court: First take up the first section of that question, was the top of the gondola car which you speak of higher or lower than your eyes at the point where you observed it?

Witness: No, sir, it was just about elevated with the railroad.

Q. I don't think you understand the question, I want to find out how high the gondola car was, the top of it from the level of your eyes, wherever they were, when you were looking at the train?

Court: Have you any idea about that?

Witness: You mean the gondola car?

Q. Yes, the top edge of it there? A. I was elevated.

Q. You could see the top of the gondola car from where you were when it was passing? A. Yes, sir.

Q. Was it higher or lower than the floor on which you were standing? A. I can't answer that.

Q. How near the floor of that barn was your face as you were fixing these planks when you were looking out?

Court: When you were looking out were you standing straight up?

Witness: Yes, sir, I was standing straight up.

Q. How tall are you? A. Five feet, ten inches.

Q. As you stood straight up, was your eyes higher than the top of the gondola, or lower? A. Yes, sir.

Q. There was some box cars that obstructed your view until the gondola started to pass by, you were looking down the track here, and the first thing to pass was box cars, and they had to pass you before you could see what was in the gondola? A. I don't understand you.

Court: Listen, suppose you were down this way, and the train was coming this way (indicating), he wants to know whether or not these cars, any box cars, coming along there obstructed your view into the gondola car.

Witness: No, sir, not on the storage track there wasn't.

Q. These girls you saw were lying in the gondola, inside the gondola? A. How was that?

Q. I thought you said the girls you saw were lying in the gondola? A. No, sir, absolutely not.

Q. What were the girls doing in the gondola—sitting down? A. No, sir, they were standing up fixing to get off——

Q. Didn't you say that you saw two girls in the bottom of the car? Isn't that what you said a few moments ago? A. No, sir.

Court: Don't go over that again. The jury knows what he said.

Mr. Leibowitz: We except.

Q. You say they were dressed in overalls? A. Yes, sir.

Q. Were they wearing shirts? A. I can't tell you about that. All I saw was they were dressed in overalls.

Q. Overalls with bibs in front, you know what I mean—straps? A. I don't know about that.

Q. Did both have on the same kind of overalls? A. I can't tell you that, the train was traveling too fast.

Q. Were they blue overalls? A. I can't say as to that. I say they had on overalls.

Q. That is all they had on—overalls, as far as you could see? A. As far as I could see and know.

Q. They didn't have any fur on them? A. I didn't pay any attention to that.

Q. You didn't see any fur?

Court: Don't take up time trying to find out about furs on the overalls.

Mr. Leibowitz: We except to the court's ruling.

Q. Now, did you see any coats, women's coats with fur on them? A. No, sir, I didn't pay any attention to that.

Q. You just glanced the women? A. I got a glance enough to know what was taking place.

Q. I am asking you what you saw?

The Court: He said that the train went by very fast. You might argue that to the jury. I think it would be proper argument that he only got a glimpse of them. Don't take up time asking that after he has described the whole surroundings.

Q. Did you get just a fleeting glimpse of them?

Court: That is the very thing I told you we was through with.

Mr. Leibowitz: We except to the court's ruling.

The witness testified further: That car traveled about half a mile before I lost sight of it. I mean from me. I did not sit there looking through that opening all the time. I went there to the opening. I looked out there. There was an opening in the barn there (indicating on picture). I wasn't looking until the box cars passed.

The following then occurred:

Q. Could you see in the gondolas what was happening after the car passed your barn? A. It all happened so quick.

Court: Let me ask you a question. How far from the railroad track was your barn?

A. Well, from the right of way fence, it ain't over 50 feet.

Court: How far from the railroad tracks, in your judgment?

A. Angling across from the crossing—well straight I don't believe it is over one hundred feet. I haven't measured it, but that is my judgment.

Q. Now, when you saw these women in the car, were they on the rear end of the car? A. They were on the sides.

Q. Left side or right side? A. Right side, traveling west.

Q. Right side facing the engine, that is towards Paint Rock? A. Yes, sir.

Q. Would you say about the middle of the car when you saw them? A. On both ends of the car.

Q. One woman on one end and one on the other? A. They were falling out like that.

Q. I want to know if they were on one end of the car, one woman on the end towards the caboose and one on the end towards the engine, was one on each end of the car? A. They got out from both ends of the car.

Q. Who did? A. The white boys.

Q. I am asking about the women? A. Well, the women was on the rear end towards Stevenson; the train was traveling west.

Q. Were they facing you at the time? A. Facing me?

Q. Were they at the rear end of the car looking out towards your barn? A. I can't tell you which way looking; they was in the rear end of the car.

Q. One right next to the other? A. Yes, sir.

Q. Were they up along the side of the car? A. Right close to the side at the end. I would call it at the end.

Q. You could see their faces? A. Yes, sir.

Q. Did you see any hats on these women? A. I didn't notice that. I just noticed they had on overalls and was women.

Q. How can you tell they were women? A. I think I can tell a lady from a man or a negro.

Q. What was there about those two figures that makes you know they were women? A. I don answered that question.

Court: Answer it again.

Witness: It is very easy to tell. I could see they was women.

Q. Did you see that they had long hair? A. No, sir, bobbed hair.

Q. Did you see any hats? A. I didn't notice.

Court: That's enough of that.

Mr. Leibowitz: No, your Honor, I want to——

Court: You are mistaken. That is enough of that; go on to something else.

Mr. Leibowitz: We except.

The witness further testified:

I saw negroes take hold of these women. I did not see them take their overalls off. I first saw them when they knocked the white boys off, and these two white girls tried to get off and the negroes grabbed them and snaked them to the bottom of the car.

The following then occurred:

Q. Did you see either of the white girls get their leg over the side of the car? A. They looked like they was doing all they could to get off.

Q. You came here to say, and are prepared to say that these women——

Court: That's enough. It's my business to see

that the witness is treated with respect, and that is disrespectful. Don't say that any more.

Mr. Leibowitz: I am trying to be respectful, I didn't do anything.

Court: Well, go on, or something will be done.

Mr. Leibowitz: I will go on.

Court: That's enough. Do you desire to ask this witness any further questions?

Q. How high in the gondola were these women, how high above the car did their heads protrude? A. Three feet.

Q. That is the only view you got, was a view of their heads, and that part showed? A. No, sir not when they was fixing to jump out.

Q. Tell us what they did, did they put their foot over the side of the car? A. They was fixing to jump out——

Court: Listen, Mr. Witness, tell what they were doing that made you believe they were trying to get out?

Witness: Well, I just figured——

Court: Not what you figured.

Witness: I saw a bunch of negroes——

Court: Tell what they were doing that made you reach the conclusion they were trying to get out?

Witness: Well, that's all I could tell you; that was my opinion.

Q. Your hearing was good on that day, was it? A. How is that?

Court: Could you hear well on that occasion?

Witness: Yes, sir.

Q. You heard screams, did you not? A. I don't understand you.

Court: Did you hear any screams?

Witness: Yes, sir.

The witness further testified:

I heard no shouts. I have no telephone in my place. My house is a mile and a half to the nearest telephone. After the train passed I got out of the barn and went on up to the boys. The boys was up on the railroad crossing. The boys called on me for help. Yes, sir. They was calling for a telephone. When the boys passed on, I went directly home and stayed there the rest of the day. I didn't go to any telephone.

LEE ADAMS, sworn for the State, testified:

Direct examination:

My name is Lee Adams. On March 25th, 1931, I lived at Stevenson about a mile and a half east of Stevenson. My farm is west of Stevenson. I was down near the track of the Southern Railroad between Stevenson and Paint Rock, on March 25th, 1931. I saw a freight train pass there at that time. I was about half a quarter from the railroad, hauling cross-ties, sitting on a load of cross-ties on a wagon. That freight train was traveling from Stevenson going towards Scottsboro in the direction of Paint Rock. I saw several people on that train as it passed. Well, some of them—I can't say—some of them was colored folks because some of them had their faces to me and some had their backs to me. They was on a flat car—a gondola car. They was scuffling. There was a man standing with his back towards the west side of the car and a man came up in front of him like, and struck this way (indicating), and there was somebody standing right there at them that picked him up and threw him out of the car, out over the car. He went out of my sight, and as he went out of my sight I saw somebody strike down that way (indicating) in the car, he had his back to me and I couldn't tell if he

was white or colored. I saw them throw two off. After the train passed I got on up to the railroad, and as I got up to the railroad, where the dirt road intersects the railroad, I saw two white men coming back up the railroad going towards Stevenson. The blood was running down over their faces; they were bare-headed, and one had a handkerchief that was red, I don't know what it was red with, but the handkerchief looked to me like it was let with blood. I got pretty close to them, about thirty steps; they was going back that way in a fast walk. I never spoke to them and they didn't speak to me. They were about a mile from Stevenson at that time. They were taking their sleeve and wiping their heads this way (indicating). The blood was running down on one of them's shirt, and he was wiping the blood off with his sleeve, this way (indicating).

Cross examination:

I was half a quarter when this striking took place. I said that on the other trial. I was about half a quarter when this striking was going on. I said I was half a quarter when the striking was going on. I was half a quarter when I was sitting on the load of cross ties. I drove the wagon on up to the railroad. I was still sitting on my cross-ties. I had been on that load of cross-ties from the time I first saw the train until I drove up to the crossing and until the train passed.

The following then occurred:

Q. Did you testify before Judge Horton as follows:

"Q. How were you located with reference to the train, were you on the ground, or even with the train, or above it or how? A. I was sitting on a load of cross-ties and when the train come out of the cut I was something like level with the train.

"Q. How far away from the train were you when it passed? A. I was just about a quarter.

"Q. Quarter? (And I asked) Quarter of a mile? A. Yes, sir."
Did you say that before Judgt Horton last Spring, answer that "Yes" or "No"? A. I told just the truth about it.

Court: Do you remember whether you said what he read to you?

Witness: I told him half a quarter.

Court: Did you say that, do you remember whether or not you said what he has just read to you?

Witness: No, sir, I don't remember.

The witness further testified:

I can distinguish a negro from a white man a quarter of a mile, if they had their faces to me, I could. Half a quarter is what I said. I can tell the difference between a white man and a negro a quarter of a mile away. If they have their face to me I can. I don't know whether there was any women folks or not, the train passed by me running about 30 miles an hour. I never heard no shots.

TOM DOBBINS, sworn for the State, testified as follows:

Direct examination:

(Mr. Leibowitz asked: Is Ory Dobbins here? And the witness answered, If he is here I don't know nothing about it; he hasn't been subpoenaed.)

My name is Tom Dobbins. In March, 1931, I was living on this side of Stevenson. On the right of way of the Southern Railroad, about two miles this side of Stevenson, about fifty feet from the railroad. I live west of where Mr. Luther Morris lived. On March 25, 1931, I was around near my home near the Southern

Railroad tracks. On March 25th, 1931, I saw a freight train come along the railroad track near my home, between twelve and one o'clock. It was going west, towards Paint Rock. I seen a lots of people in a gondola car; one of them goms as it went by there. They was mixed up. They was scuffling around in there as they passed my house, I think it was. They was scuffling like somebody fighting in the train as it went by my house—white and colored people. I observed for something like a hundred yards. I did not see anybody get off that train.

Cross Examination:

I know Ory Dobbins. He is my son. He was standing out in my yard in front of the house, where he could see the train pass by. He was living when I left home. He is not confined to the house, and his physical condition is such that if he is subpoenaed, he could be brought here for the prosecution, if it needs him,—he is in condition to come.

SAM MITCHELL, sworn for the State, testified:

Direct Examination:

Along in March, 1931, I lived this side of Stevenson. I was there at Mr. Dobbins' place on the 25th of March, 1931, when a freight train passed by there going towards Paint Rock. I saw people on that train. They was on a coal car, a half-gon, I think they call it. They were white people and colored people. Seems to me like they was both kinds. Seems to me like they was wrestlin'—we see'd them wrestlin', 'peared like. That's all I seen; the train was going by pretty fast. I did not see anybody get off that train there. I know where Mr. Luther Morris lived at that time. I was west of

where he lived. I know where Mr. Lee Adams' farm is. I was west from him. That train was going towards Paint Rock. It was about one o'clock; we was going back to our plowing. We had had our dinner.

Cross Examination:

That is about two and a quarter miles out of Stevenson. Mr. Morris lived nearer to Stevenson than I was. Mr. Adams' farm was nearer to Stevenson than where I was. I seen some negroes in the doorways of box cars while the scuffling was going on. They was settin' down in the door, some of them, feet hanging down. I can't tell you how many. I never had no thoughts about anything coming up. I just can't say if it was a dozen or half a dozen. There was some in there, I can't say how many. As the train passed by, I saw negroes all along the different parts of the train back towards the caboose, all up and down the train. I can't say for sure if they was on the oil tank car; they was all up and down the train. I didn't have in my mind to count them that was on the train.

W. E. BRANNUM, sworn for the State, testified:

Direct Examination:

My name is W. E. Brannum. I was at the railroad station at Paint Rock, Ala., one day in March, 1931, when some folks were taken off of a freight train. I was there when the train came in. I saw some colored folks on that train. I saw them before the train stopped. Well, it was something like a quarter or half a quarter from the station towards Stevenson. They was something about, I believe, some six or eight cars back from the engine. When I first discovered them, they climbin' out of a gondola car, a coal car. That was

back towards the caboose—the coal car was back towards the engine. That was a coal car they were climbing up on. Well, I don't know how many of them were there; I never counted them until after we got them sorter lined up; there was nine of them then. I don't know how many more there were, whether there was any or not. I can't say how many I saw get out of that gondola car before the train stopped, for I didn't count them. There looked to be some fifteen or sixteen of them climbin' up on the coal car. All that I saw were negroes. After the train stopped, as I was coming down the train where they captured them I saw one lady sink down at the end of the gondola,—she was climbin' down and sank down to the ground.

The following then occurred:

Q. Was that the same car that you saw—that you just told us you saw these negroes get out of?

Mr. Leibowitz: That is too vital a question to be allowed.

Court: Overruled.

Mr. Leibowitz: We except.

Q. Was it or not the same car that you saw the negroes get out of? A. Yes, sir, it was the same gondola I saw the negroes get out of. That lady sunk down at the front and towards the engine.

Q. Did you see what happened after she sank down? A. The next time I saw the lady, they had her in a wheel chair up in town.

Q. How far from the station? A. Something like 150 to 200 yards.

Q. Did you see another lady around there? A. I never saw her for a little bit.

Q. How many did you see all told? A. Two.

Q. Where did you see the other one? A. She was going 'long side the chair where they were carrying the other lady.

Q. What was their condition or appearance, how did these ladies appear to you, what was their condition? A. They seemed unnerved a little bit to me.

Mr. Leibowitz: We object to that and move to strike out the answer.

Court: Overruled.

Mr. Leibowitz: Exception.

Q. Did you see any dirt or dust on them, did they appear to be disheveled? A. I never paid any attention to them. They looked a little bit dirty, like one would that had been on a hobo trip.

Q. How were they dressed? A. They had on calico dresses is all that I know.

Q. Did you go up to where they took them? A. No, sir, I didn't go up to the store. I went along the side walk; carried one negro up there.

Q. How close did you get to the women? A. I was something like five or six steps as they passed by me.

Q. What was the condition of the woman in the chair, how did she appear? A. She seemed like she was unnerved mightily, she was leaning over lifeless like to me like.

Mr. Leibowitz: That is objected to.

Court: He says "apparently"—I overruled the objection.

(At this point recessed until 1:00 P. M. Upon the reconvening of court, the following transpired:)

Mr. Harold Harlan appeared in court in answer to subpoena, when Mr. Knight agreed that the transcript of the trial before Judge Horton was a correct transcript of the testimony given on that trial, and Mr. Harlan was not examined. Thereupon, the state, through Mr. Knight, agreed that the transcript of the Scottsboro

trials were correct transcripts as furnished by the official reporter, and that counsel for defendant could read excerpts from the testimony on each trial. The agreement on the part of the state being that the typewritten portion of both records were correct. Thereupon, cross examination of the witness on the stand at adjournment was taken up.

Cross Examination:

When I got down to the railroad station at Paint Rock that was before the train got there. Something like fifteen minutes, maybe, ten minutes—ten or fifteen minutes. There were fifty men around that station when the train pulled in. I don't know how many there were; I never counted them. I waited at the station until the train came in, just across the railroad from the depot on the right hand side. The train passed on down by me as I stood there. I was a little opposite of it; I was south of the station. The railroad runs north and south there, and I was a little south of the station. I was beyond the station from the water tank. I remained on the opposite side of the tracks until the train stopped. I did not see who was on the engine when the train passed. I couldn't recognize who it was. I did not see a negro fireman on the engine tender, or on the engine at the time the engine passed by.

After the train passed me I went towards where the water tank is. I got to where the water tank is and I went a little further on down between the water tank and the coal chute. That is about 200 feet between the chute and the tank. I don't know how close to the coal chute I got. I don't know how many feet; I never measured it; I don't know how many feet it was. It was about 150 feet from the coal chute, I guess. I was not right there about 100 to 150 feet from that coal chute when I saw negroes climbing over from the gondola on the coal car. When I saw the negroes climb

from the gondola I was standing a little south of the depot. The train was still going at that time. It was coming around the curve about a quarter or half a quarter south of me. That was when I saw the negroes climbing from the gondola into the coal car. When the train passed by me they were still rustlin' around on this coal car. Rustlin' around on the coal car, seemed to be trying to get out of the gondola. They were tussling with the coal, trying to move this out and make a "get away" I suppose. I never saw any negroes tussling with themselves.

That coal car was right next to the gondola. It was a different kind of car; differently constructed car, different looking car, it looked different. I do not see any car on that track (indicating miniature train) that looks like the cars the negroes were getting on; there ain't nothing in that that looks like the car they was trying to get on. There wasn't but one gondola car joined together in any way. I don't know how many on the whole train. One gondola and one coal car passed me; of course there was some box cars passing too. Well, there was a box car in front of the coal car and one at the back end of the gondola. My face wasn't towards Stevenson when I stopped 100 to 150 feet from the coal chute. I would be on the right side of the train. I was on the opposite side of the train from the station.

The gondola wasn't carrying them; they were climbin' out and rasslin' over the top of the coal car. That is, the car in front of the coal car. The gondola passed first. I was standing about opposite the station as the train came by. The train finally comes to a stop. When the train stopped, I was standing opposite the station and the gondola and coal car were north of the station; they had reached the station and went by. Somewhere about that depot there it changes its course, and the train runs north. I can tell you about that. The gondola and coal car were between the station and the coal chute when the train stopped. Somewheres right about

even with the water tank. I can't say how many feet it was; I didn't measure it, but something like 200 feet. The car that I saw the woman sink to the ground near I would say that would be 100 or 150 feet from the coal chute. Something like that. I can't say how many feet it was. That is a fair estimate I can give you.

I never paid any attention to whether the dresses the women wore were light calico and can't tell you that, but from my observation as I saw them, I thought they had on calico dresses. I could be mistaken, I never paid much attention to the women. I got in between some cars and crossed over by coming between them. While the train was stopped there, while I saw this woman sink to the ground, I was still on the right side of the train. She was on the left side and I was on the right side. Whatever I saw I had to see in between these two cars. I couldn't see over, across or under the cars. I could see in between. I can't say if both of these women had on dresses. I can't say whether it was a dress or what it was. I never took time to look. I did not have any conversation with anybody since I left court at the noon recess. Nobody spoke to me about the case. Nobody told me to correct myself, that the women wasn't wearing dresses.

I did not see a man named Turner, who was the conductor on that train. I saw Mr. Hill. I saw him after we got the negroes up in town. When the train was stopped there I was on the other side. I remember that I saw him there at the depot. I did not walk down the track towards the back end of the train and examine any of the cars in that stretch of cars. I did not get any further than 100 to 150 feet away from the coal chute. I didn't get any nearer. After I got to the cars somewhere along here (indicating), I then cross in between these cars and get over on the other side. Then I walked up in town. I did not get within three or four feet of these women. I don't think I got hardly that close. I might have been four or five, something like

that. I don't know how many. I can't say I saw their faces bloody. I noticed no bruised places on their faces, or any cut places. I didn't examine that close. I didn't pay that close attention to them; I didn't pay enough attention to see what was on them. I could not see anything about their faces as I looked at them. I never paid no attention. I wasn't close enough. I couldn't tell; they was going along and I was watching the negroes; I just happened to glance around and saw them carrying this woman by. There was some little excitement, but not much.

ORVILLE GILLEY, sworn for the State, testified:

Direct Examination:

My name is Orville Gilley. I live in Albertville, Alabama and lived there in March, 1931. During the past 30 days back from now I have been down here, at Montgomery and at my home in Albertville. I spent a portion of that time in Albertville and a portion of it in Montgomery. I was with Mr. Knight in Montgomery. I went to see him while I was there. I left Albertville a week ago today and came to Decatur.

I was on a freight train that traveled through Jackson County, between Stevenson and Paint Rock, Alabama, in March, 1931. I was on that train when it reached Stevenson. Several were on the train. On the oil tank where I was riding there were two girls and six other white boys. The girls were Victoria Price and Ruby Bates. We got off the oil tank car at Stevenson. We went up and got in a gondola; got off the oil tank and got in a gondola. The two girls and the white boys went along with me. No one else got in there with me at that time. There was nobody else in that gondola when I got in there with my companions. We all got

in about the same time. That gondola car was loaded with chert; fine gravel; I was told that it was chert. About five minutes after I got in the gondola the train started away from Stevenson.

After the train started, I saw this defendant, Haywood Patterson, come over the top of the train, and some other colored boys were with him; they came over the train and got in the gondola after the train started and was about three miles below Stevenson. I saw a pistol in his hand as he came over. I didn't count them at that time, when I did count them there were nine, later when I counted them. As I saw them coming over I wasn't exactly in the end. I was a little ways from the end, away from it a little ways. The other white boys were around me. The white girls were on the other side from me. I wasn't in the end, I was down towards middle ways, midways from them a little. We was in the end towards the caboose, a little closer to the end towards the caboose than the other end. The girls were across from me on the side of the train, down a little ways, not very much. As the negroes came over into the gondola car when they first got in they said, "All you white sons-of-bitches unload". I know which one said that. It wasn't that one; it was another one. I can't say which one came first; they were in front, this one with the other one. They came in all right, I can't tell you whether they came one after another or not. Then the other boys jumped off. The other white boys on the train, they started battling around there. The white boys started to get off. They knocked a couple in the head—they started to jump off, and then they got the girls there and attacked them.

I saw the defendant over there go to both girls; he had intercourse with both girls. Some were holding the girls, and some had a knife to their necks, some were holding their legs open; they were all around the girls at the time the raping was going on; sometimes some would be raping and some holding—they would be hold-

ing them while others were having sexual intercourse with the girls. When I left the end of the car I was sitting in and got up to where the girls was—I didn't go to where the girls was until towards the last, and when I got up there I saw they were about to kill one of the girls; her eyes was bulging out and she was gasping, and I says to this boy that had the gun, "Why don't you make them quit, he is going to kill her" and he looked over and seen it, and told the boy that was on her to get off'n her,—he says "You are killing that girl, you have all done what you want"—you want me to tell what he said? Well, he says, "You have all done fucked, if any of the rest of you boys cut these girls again, there will be some niggers jumping off". That was after he had been to both the girls. I do not know which one first put his hands on either one of these girls.

The girls had on overalls and some dresses; I don't know exactly how many dresses; they had on at least one dress, and may have had on two or three dresses. I can't say exactly. They also had on a coat or cloak or something or other. I can't say exactly what it was. While they were laying on that chert, they had the clothes of these girls up and their overalls were pulled down. I did not see who pulled their overalls down. I saw at first they were around the girls, I couldn't tell exactly what they did; they run into the girls and grabbed them and threw them down there, and in all the excitement there, I couldn't see which one did it. I was at the other end—well this end. I was at the side before they got through. I had a struggle or tussle with someone on the car, they tried to get me to jump off. This one said "If you don't jump off I will shoot you". One of the negroes, one of the colored boys he come up, and took hold of me,—he's the one that said "All you white sons of bitches unload"—then I got loose from him. This defendant is the man that said, "If you don't jump off I'll shoot you". I did not see more than one pistol. That was in the hands of this defendant. I can't say exactly

how many knives I saw, three or four of them had open knives in their hands.

The train stopped at Paint Rock. When the train stopped at Paint Rock these colored boys were in the same gondola. When the train stopped they scattered out up and down the train. I got off there. The girls got off there too. When the train started to slow down at Paint Rock the negroes scattered up and down the train. I got off on the left hand side, looking towards the engine. Nobody got off on that side that I saw, none of these negroes, at the same time I did. The next time I saw the girls was at Paint Rock,—no not Paint Rock, but Scottsboro. That was at Paint Rock and I saw the girls next at Scottsboro. I saw the girls at Paint Rock after they got off the train up there at a store I will say about a block from where the train was. I do not know how long after they finished these acts before the train got to Paint Rock; they had been through approximately fifteen minutes, I reckon. They had their clothes back on and their overalls up. I helped Victoria pull her overalls up. I did not hear any conversation that these negroes had, I did not hear them say anything about the women, after the intercourse was over..

Cross Examination:

I have not been a hobo for about ten years, nor have I just farmed. My business for the past two years has been that of entertainer, entertaining anybody I could, any place I could, on the street. Not in the hobo swamps too. I have been in one or two hobo swamps. When I am away from home, I do not usually sleep in a hobo swamp.

I boarded this train at Chattanooga. I was not employed there. I didn't have any regular employment on March 25, 1931. I haven't any regular employment; I am an entertainer. I recite poetry and take up a collection after I finish, in hotel lobbies, restaurants, out on the streets, any place. I do not recite poetry in hobo

swamps. I have been engaged in reciting poetry around seven years. I am twenty-one years old now. I have been all over the United States and recited, yes, sir. I do most of my riding on the rails on freights. I wouldn't say all of it, but most of it. I have been riding freights since I see Attorney General Knight. I have been riding freights too. I haven't rode any tickets since I see Mr. Knight. Rode the same way, hoboing on freights, and I caught a couple or three rides on the highway too. Some place maybe I couldn't get a train and I would flag a ride, "hitch-hike"—you know what that is.

I cannot name one single hotel in the state of Alabama that I went into the lobby and recited poetry for pay. I have been in the City of Birmingham. Just passing through. I have recited poetry in Birmingham out of the street. I have never recited poetry in any of the hotels in Montgomery. I don't remember the names of all the hotels I have recited poetry in the south; I can't remember the names of the hotels. I don't know as I am so well acquainted in the south, but I have recited poetry in the hotels in the south, but I don't remember the name. I have been in New York. I have recited poetry in New York, but I can't give the names of any hotels that I would go into the lobby and recite. Sometimes I would recite poetry on the streets and some fellow would ask me to come in the lobby, and I would go in. I would be on my way and didn't pay any attention to the name of the hotel. I cannot give the name of any hotel in this wide land that I recited poetry in.

I remember where I slept in Chattanooga the night before I got on this freight. It was in a box car. I know where the jungle is, in Chattanooga, Tennessee. I did not sleep in that jungle that night. I know where the Central of Georgia Railroad tracks there in Chattanooga, where they meet the tracks of the Southern. That was the place I met a man named Lester Carter the day before I started for Huntsville. It was good dusk, getting dusk, it might have been that late or

later. I had never seen Lester Carter before that. I did not ask him for a match. I was standing across the track, and he came along and asked me for a match. When he crossed the track I struck up an acquaintance with him. He walked up and started talking to me. Two girls come across 'long side of Lester Carter; they were supposed to be with him. They were Victoria Price and Ruby Bates. It was the night before the trouble happened on that train. I saw Victoria Price and Ruby Bates and Lester Carter in the freight yards at Chattanooga. I did not go somewhere with them.

Defendants' counsel asked the witness as follows:

Q. Did you go to the Hobos' jungle with them?

Mr. Knight objected to the question. The Court sustained the objection. Mr. Leibowitz said: Will you let me tell your Honor what I would like to prove by the witness by this question. The Court refused: I adhere to my ruling, I can imagine what you want to prove. Mr. Leibowitz reserved an exception.

The witness testified further:

The next time I saw them was the next morning about 8:30. They were crossing the track when I saw them. That's what I was fixing to tell you. They were pretty hungry; they had just got in, and I went down to a restaurant and for some sandwiches and coffee for the girls. Lester Carter and I eat a sandwich and drunk some coffee. I can't say if the restaurant was on Rossville Boulevard. When I left the restaurant I carried some sandwiches and a bottle of coffee for them; that wasn't in the jungle. When I went off I and Lester Carter both went and carried that food back to the girls. Lester Carter went with me. I give them the sandwiches and coffee and then I went to town. I didn't hear the girls call Carter anything. I didn't hear him addressed. When we met he asked what my name was,

and said that his name was Lester Carter. I left the girls waiting for me when I went off to get the food, across the track where I first met them. Lester Carter came up with the girls, and I went and brought back food. I gave them the sandwiches and left for town. I left Lester Carter standing there with the girls. I slept in a box car. I come back to the railroad and found a box car and slept in that. When I went to town I was not away for some time, not so long.

The following then occurred:

Q. After you went to town and after you left Lester Carter with the two girls——

Court: I think you have gone far enough on that. Let's stop there—take an exception and go on with something else.

Mr. Leibowitz: Have Ramsey come out.

Court: What do you want him for?

Mr. Leibowitz: I want Ramsey brought out for the purpose of identification.

Court: Anything else?

Mr. Leibowitz: No, sir.

Court: You may have Ramsey brought out.

(Colored man comes into the court room.)

Q. Look at this man, Gilley (Witness looks at colored man) now, the next question is this, did you see that colored man in the jungles of Cattanooga during the night or early morning, before you left from Chattanooga to come back to Huntsville, while you were in company with Ruby Bates, there in the jungle, sitting there side by side?

Mr. Knight: We object to that.

Court: Sustained. That is not evidence. I have ruled on that at least half a dozen times.

Mr. Knight: I think that the (jury) should

here be instructed that the manner in which the defendant's counsel puts the question to the witness is no evidence whatsoever in this case.

The Court: They can be the judges of the manner.

Mr. Knight: He keeps repeating questions that the court has ruled as illegal questions.

Court: I think the repeating of them was improper. (To Mr. Leibowitz.) You have your point presented, and your keep on asking the question does not add anything to it, as a matter of law; that is what you are trying to do, raise and present a law point and I think you have done that enough.

Q. What time did you get up in the morning, you say you slept in a box car? A. I judge about seven-thirty.

Q. What did you do from that time on? A. I went out and bummed a house to get my breakfast, a private house.

Q. Without paying? A. Yes, sir, I was out of funds at that time. I spent my money getting the girls something to eat the night before.

Q. Did you recite poetry for the lady that gave you your breakfast?

Court: No, no, stop that. I don't like poetry anyhow.

Q. Do you know what a grand jury is?

Court: I guess most people do. Don't waste time on things like that.

Mr. Leibowitz: Exception.

Q. Do you remember testifying before the grand jury in this case? A. Yes, sir, at Scottsboro.

Q. Do you remember what you told the grand jury?

Mr. Knight: We object to that.
Court: I sustain the objection.
Mr. Leibowitz: We except:

The witness testified further:

I did not tell the grand jury there wasn't any raping in that car in this case. I don't know what case I testified in at Scottsboro. To tell you the truth, I don't know which case it was. I did not testify in the first case that was tried. I was in the witness room. In the Scottsboro court. I was on speaking terms with these girls when I saw them again the following morning.

Defendants' Counsel asked the witness as follows:

Q. After you had something to eat in Chattanooga next morning where did you go?

The Court ruled: I don't see the need of going any further into that. Defendants' Counsel excepted.

The witness testified further:

The next morning I saw the women at about 8:30. They were down near the track, not in the swamps. I talked to them. Lester Carter come up about the same time I did; I don't know whether he had been with them or not. He was right there near the women when I saw them. I saw the direction Carter was coming from when I saw him; he was coming across the track, and they were on this side of the track. That place is about two miles from the depot in Chattanooga. I don't know whether it was that far or not. I do not remember a pole yard, there in that yard, for telephone or telegraph poles. I did not stay in company of these girls from 8:30 on, with Lester Carter. I left

them again and I walked up to some house there and got them some sandwiches. I brought the sandwiches back to Carter and the girls. They took the sandwiches. Then the train pulled out, and we boarded it, to get out of Chattanooga. I don't know what time the train pulled out, it was due out at 10:30, but it was late.

I did not spend all of two hours or two and a half hours in company with the two girls and Lester Carter, but practically most of it. When the train came along, I did not intend to come to Huntsville. I was going to Memphis. Carter was not going with me. They were going to Huntsville, they said. He said that he was going to Huntsville, and that is what the two girls said.

Defendant's attorney asked the witness as follows:

Q. Did you see any lady or woman come into the railroad yards with either of these two girls, named Callie Brochie?

The state objected. The Court sustained the objection. Defendant's attorney excepted.

The witness testified further:

I met some white boys that morning on the oil tank car. I didn't see them in the railroad yards; they got on the oil tank after I did. I did not know these boys. They got on the same oil tank car with me when I the two girls and Lester Carter got on. The two girls were on the end of the tank, I was on one side and Carter was on the other side. The four of us were all around, kin'ly together, not exactly so. One of the girls was about here (indicating), one of them about here (indicating), I was along here (indicating) and Lester Carter was about here (indicating). I have testified that the girls were on the end of the car nearest the engine. I was standing right close to them on the righ hand side of the train. And Carter was on the other, or left hand side of the train. Colored boys and

white boys were on the oil tank. Some were on this side and some were on that side (indicating on miniature). I was not talking to this girl, holding her so that she wouldn't fall. I was holding so that I wouldn't fall. While I was there some negro boys come by on that car; one or two passed by us one time. I don't know of any dispute there about some of the white boys stepping on the negro boy's hands. I couldn't say if there were any other oil tank cars further down on the same train. I saw one negro pass, he come by me on the oil tank car. He went down towards the end of the train, between Stevenson and Chattanooga. I don't know of any trouble when the train stopped at Stevenson, between the white boys and colored boys, or before the train stopped at Stevenson. I know the Gladwell brothers; that's the name they gave. There was a boy by the name of Coleman Freeman. I don't remember one giving his name as Ferguson. There was one by the name of Gleason, John Gleason. I know these boys by other names than these. They gave a monicker: the Georgia Chicken; the Carolina Kid,—they gave these monickers,—that is what we call a monicker. They called me Carolina Slim.

I didn't see that in between Chattanooga and Stevenson, the train was going up grade, and slowing down, and at that time, some of the white boys got off and picked up some rocks along the roadbed, and that they threw them at the car in which the negro boys were riding, several cars behind where the oil tank was. The first I knew of trouble was when this boy came in the gondola and said "All you white sons of bitches unload". That is the first I knew of it. I didn't see no trouble between the white boys and the negroes before we got to Stevenson. These white boys were sitting on the oil tank car. I don't know of any other white boys on the train other than the boys on the oil tank car. I didn't notice any switching in the yards at Stevenson. I got off the oil tank and went up and got in the gondola. I did not help

the girls off. I got off before they did, looking for an empty box car, but I didn't find one. I was going to get into an empty box car myself. I said nothing to the girls about getting into an empty box car. I was going to Memphis, and was looking out for myself. I judge we were at Stevenson about ten minutes. I went up and got in the gondola before the train started. The girls got into the same gondola with me. Six other white boys also got in the gondola. I kinder stretched out a little—I got as comfortable as I could.

Before that I had never been in Victoria Price's home. I have been to her home since then. It was around about the 7th or 8th of August, somewhere along there, this year. I had not corresponded with Victoria during my trips. She had not written to me asking me to come to her house. If she did, I never received the mail. I have no regular post office address, except at home. I didn't go home many times in that period, no, sir.

The following then occurred:

Q. Had you been to see Mr. Knight before you went to see Victoria? A. Mr. Knight?

Q. Just answer that "Yes" or "No", please? A. Mr. Knight came to see me.

Q. Had Mr. Knight seen you before you went to see Victoria? A. Yes, sir.

Q. Have you ever talked with Mr. Knight before you went to Huntsville? A. It was at Huntsville that I talked with Mr. Knight.

Q. You notified Mr. Knight that you were going to be in Huntsville in August of this year?

Court: That's enough on that.

The witness further testified:

I came back to Huntsville to try and find out when this next trial was going to be. I came back purposely

to be a witness. I came from the State of California. There were people on the freights that I rode; I don't know exactly whether you would call that someone. If there was anybody connected with Mr. Knight's office on those freights I didn't find it out. I had not received any message from Mr. Knight, in California, to come back. I came back alone. I am acquainted with that gentleman sitting next to Mr. Knight, Mr. McClung. I have been knowing him—yesterday was Monday, wasn't it—since a week ago today. That is the first time I ever met him. I have a suit. The state hasn't bought it. I did not get the money from them. Mr. Knight gave me $3.00 with which I bought these slippers; these shoes I have on. That's all he gave me. Mr. Lawson gave me 15c. once to get something to eat. The state has been feeding me, but it hasn't given me any money. Mr. Knight has sent a little to my mother; he has sent her a little while I was engaged in this case. I ran across one of these other boys while I was traveling around. I ran across Carter in San Francisco, Cal. I recognized him. I would try to recognize him again; people could have their faces lifted and things like that.

I did not talk to these girls as the train started out of Chattanooga. I knew that I was crossing the state line from Tennessee. We came from Tennessee into Georgia, and from Georgia into Alabama. I crossed two state lines. There was no particular reason why I didn't talk to these women while I was on this car. I don't know if it was because I didn't want to get caught with them crossing two state lines, violating the Mann Act; they was on the tank. I couldn't keep anybody off the tank. When I got to Stevenson, I got into a gondola, that these colored boys afterwards got on.

The following then occurred:

Q. Are you sure that it wasn't in the fourth or fifth gondola, as you see on this miniature train, that this

fighting took place? A. I am sure that it wasn't in either the fourth or third.

Q. You see a string of gondolas there in that miniature train? A. Yes, sir.

Q. There were a string of gondolas on that train? A. Yes.

Q. Seven or eight? A. There was a string.

Q. Will you swear that the fight between the black boys and the white boys, didn't occur in the middle of the string of gondolas, represented by this string on this train—isn't that where it happened (indicating somewhere about the middle of the gondolas on minature)?

Court: Young man, walk over there and put your hand on the gondola where you say the trouble occurred, where these colored boys got on, put your hand on the one over there that you say represents the gondola.

Witness: I will the best I can remember.

Court: That's all right, do that.

A. I am not exactly sure which one of these it was in, but I am sure it was one or the other of these cars here (indicating two gondola cars next to box car nearest the engine).

Q. Did you see Victoria Price use a snuff box? A. Did she have a snuff box?

Q. Yes? A. I can't say that I did see her use a snuff box.

Q. Did you see her use any snuff, chew any snuff?

Court: "Dip" is the word you will have to use.

A. No, sir.

Q. Did you see Victoria Price with snuff, or a snuff box? A. I got her a box of snuff when I went to get the sandwiches; I got her a box of snuff; she said she didn't have any.

Q. Do you know whether or not Victoria Price lost her snuff box in the car where you say that she was between Stevenson and Paint Rock? A. No, sir, I don't know that.

Q. Did you give the girl any money? A. No, sir, I did not.

Q. You didn't have any to give her, did you?

Court: I reckon that's enough on that.

Q. Did the girls tell you on your way back from Chattanooga that morning, that they were broke and had no money?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: We except.

Q. Outside of what you got for the girls by going to houses to get food, did the girls buy any food from that from Chattanooga to Paint Rock? A. Did they buy any food?

Q. Yes. With any money that they had, if they had any? A. No, they did not.

Q. How many blows in the face did you see Victoria Price get? A. I can't say.

Q. She got some blows in the face, didn't she? A. I didn't see any hit her.

Q. You didn't see anybody hit her? A. No, sir.

Q. Did you see Ruby Bates struck by any of the negroes? A. No, sir, I didn't see any one hit her; I saw them thrown them down in the gravel.

Q. When they got off at Paint Rock, did you see the faces of Victoria and Ruby? A. At Paint Rock, slightly.

Q. Did you ride with them in the same automobile? A. No, sir.

Q. Did you later see them at the Scottsboro jail? A. I did.

Q. Do you know of your own knowledge why they locked up these girls in the Scottsboro jail?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: Exception.

The witness further testified:

I was one of the boys that was in the car when they came over. It is not a fact that I and Ruby Bates, Victoria Price and Lester Carter were in one of the front gondolas near the engine and that the fight actually took place between the white boys and the colored boys in a car next to the car in which we were, and while that was going on, I left the place where Ruby and Victoria were. I and Carter left the gondola, and got into the gondola where the fighting was taking place and took part in the fight. It is not true that while the fight was going on I hung on the side of the gondola car, and the car was going very fast, and one of the negro boys pulled me back and saved my life. I saw them colored boys rape the girls.

I did not leave that car at any time and go back to the caboose and give warning that two white women were being raped. I can't say how many different stations I passed on the way to Paint Rock. I did not see the stations as I passed them. I could see over the side of the car where I was standing, if I was standing. I was sitting down at the end, and during the time I got up and got over to the other end. At the time I was sitting in this gondola car, I was not able to see over the side of this gondola car. My head was just about even with the top of the side of the gondola car. When I sat up, I did not see any railroad stations along that road. I was on the rear end and went to the front end; I was in the end towards the engine and went up towards the caboose. After the fight was over, and while the raping was going on, there was nobody in the

joining car, next to the gondola I was on, in which I say the raping was being done, not as I remember.

The following then occurred:

Q. Was the joining car to the one where the raping was going on towards the caboose, another gondola? A. Joining car.

Q. Maybe I didn't make myself plain, you said this was taking place in the first or second gondola nearest the engine, was anybody in the 3rd car, or the fourth car, or the fifth, or sixth, anybody that you could see when you got up and stood up? A. I didn't see anybody when I stood up.

Q. Did you, at any time, Orville, leave that gondola for the purpose of going towards the caboose in order to give notice to the conductor that two white women were being raped by a bunch of negroes? A. Did I leave the car?

Q. Yes. A. No, sir, I did not.

Q. Did any negro, after you got back into the car, attempt to kill you or shoot you, or strike you? A. After I got back into the car?

Q. Yes. A. I didn't leave the car.

Q. Didn't you get off on the side of the car and hang over? A. Yes, sir, kinder over the side. I didn't need any help to get back.

Q. You never left that car? A. No, sir, I never left the car.

Q. Did you see one of the white boys run toward the engine, attempting to jump off the car? A. I didn't see him when he ran along.

The witness further testified:

I saw a white boy get off that train at Paint Rock. His name was Gleason. I didn't see him get off; I saw him after he got off. He did get off at Paint Rock. I didn't see him leave the car. He was in the gondola,

but I don't know when he left; I didn't personally see him leave. I don't know if Gleason was a witness in the Scottsboro cases. At no time while this raping was going on did I ever make any attempt to notify any engineer, or any official of that train what was going on in this gondola car.

Defendant's attorney asked the witness as follows:

Q. When Gleason left that gondola, while this trouble was going on, did Gleason have a chance to go either forward to the engineer or towards the caboose in order to give the alarm?

Mr. Knight objected. The Court sustained the objection and Mr. Leibowitz excepted.

The witness further testified:

Gleason went to Scottsboro with me. Gleason and I and the negroes were in the same truck. I don't know how Victoria Price arrived at the jail; she and Ruby Bates was there; she was getting out of a car. I don't remember if she motioned for me to come to her. I did not go and speak to her, nor did she tell me to say that I was her brother. I don't remember if she said anything to me right then. She didn't tell me to say that I was her brother; I am sure of that.

I didn't hear any shots fired. I was on the very same car with Victoria Price. I did not see any negro hit Victoria Price on the head with any gun.

I did see Victoria Price in the jail. I saw her every day. I was in close contact with her; they were in the run around, and I was in the cage. I did not talk to her about the case in the jail. She did not tell me that if I didn't testify the way she wanted me to, that I would be locked up for vagrancy, or would be locked up for violating the Mann Act for crossing the state lines. I was friendly with Victoria in the jail. She did wash my shirt.

The following then occurred:

Q. Now, you have become friendly with her and want to help her out in the things she wants to do? A. What do you mean by that?

Q. Don't you know what I mean? A. No, sir.

The witness further testified:

I don't remember seeing Odell Gladwell talk to Victoria Price at the time she arrived at the Scottsboro jail, just as she was getting out of the car. Victoria did not read some letters to me that she had received from a man in Chattanooga named "Red". This story that I have told here on the witness stand today, I have talked about it with Attorney General Knight, not with Victoria Price. I haven't talked with her about the case. I was at her house in Huntsville three times, just for a few minutes at a time. I just stopped by to see how she was getting along, and how her mother was getting along. The last time was in August. I was not there about a week or ten days ago. I was in the courthouse, yes, sir. Two weeks ago tomorrow I was in the courthouse in Huntsville. Victoria Price was not there with Mr. Knight. Victoria Price wasn't there at all. I did not live in Huntsville at that time. When Mr. Knight found me there, I came through Decatur to go to Huntsville. No one told me to go to Huntsville. I did not meet Mr. Knight there by accident, I met him by appointment in Huntsville. At no time were I and Victoria Price together in the courthouse in Huntsville. We were together somewhere else. Not at Victoria Price's house but at Mr. Douglass Taylor's office. Victoria Price was there, saw Mr. Knight. I don't expect one penny out of this business.

The following then occurred:

Mr. Knight: If the court please, this witness just came to state's counsel and stated——

Mr. Leibowitz: I object to what he stated.

Court: If there is anything he wants to explain, all right.

Mr. Knight: That is what we understand that he wants to do.

The Court: All right. (Witness Gilley returns to stand.)

Re-direct Examination:

Q. In your statement, Mr. Gilley, relative to the location of the car where this fight occurred in, I don't know whether or not at the time, you had in mind, when you pointed out that car, which end this engine was on? A. At that time, I figured that it was on that end. (Indicating end away from engine.)

Mr. Leibowiz: Are you going to permit this, Judge Calahan?

Court: I have permitted it.

Mr. Leibowitz: I respectfully except, and I want the record to show——

Court: The record will show.

Q. Will you point out to the court and jury which cars you meant? A. I was thinking the engine was on this end (indicating); this train that we was on had on a caboose——

Q. Just get down, please, and point out the cars where the fight was going on? A. It was these two, or rather one or the other of these two (indicating two cars on string on gondolas nearest rear end of train). I was figuring that the engine was on this end of the train when I answered before. I was turned around as to the place where the engine was.

Re-cross Examination:

Q. When you got off the stand did you speak to anybody? A. About this?

Q. Yes, did you speak to anybody about it? A. Yes, sir, I spoke to Mr. Knight and told him there was something I wanted to explain.

Q. I asked you about the engine part and the caboose part, didn't I? A. Yes, sir.

Q. And you just thought about this as you walked out through the door? A. Yes, sir, I thought of it before I walked through the door. I wasn't sure of it. I just wanted to explain it. I am not up on the law as you are. I wanted to know if I could have a chance to explain it; I wanted to find out.

Q. Did you think that was important in this case when you were sitting on the witness stand? A. When I was on the witness stand?

Q. Yes, you thought it was important? A. Yes, sir, I thought it was.

Q. While you were on the stand you didn't correct it at all? A. I didn't know whether I would have a chance or not; that is what I wanted to find out.

Q. When did you find out that you had made a mistake about the engine? A. A little after I got back from over there——

Q. (By the court.) You mean after you had pointed out some cars, while you were still being examined? A. Yes, sir, a little while afterwards.

Q. Which was it, in the first or second car? A. I wouldn't be positive about that. It is between those two cars there (indicating), I don't know which one, whether it was this one here (indicating) or this one here (indicating).

Q. There was nobody between you and the engine at all, you could see that engine couldn't you? A. Yes, sir.

Q. Anybody could see—I mean you could see that engine when you made the first statement that it was the first or second car of that string nearest the engine? A. Yes, sir, I could see it.

That's all, you may stand aside.

The State of Alabama then rested.

R. S. TURNER, sworn for the defendant, testified as follows:

Direct examination:

My name is Mr. R. S. Turner. I was the conductor on this train that was stopped at Paint Rock on the 25th of March, 1931. It ran from Chattanooga to Sheffield. I have with me the official record, the official make up of that train when it left Stevenson. We had two box cars next to the engine, then this coal car, then we had three box cars, then we picked up one at Stevenson, and four out of Stevenson. We cut off other cars and come in and picked up one car, picked up a car of cement for Corinth. We had some switching to do that day and we had four box cars in here when we left Stevenson. Then there were eight gondolas, chat cars. That is a fair representation of the chat cars. After the chat cars, we had three box cars after that.

Court: Is that a record that you make yourself that you are fixing to refresh yourself from?

Witness: Yes, sir.

Then a tank car, and then a flat car with lumber and a lot more cars behind that. 21 cars behind that, 22 with the caboose. Among these 21 cars there were box cars and tank cars. There were no chat cars behind this lumber car. The chat cars was all up in front. Nor any coal cars, tank cars and box cars; wasn't any coal cars at all. The box cars were loaded and the coal car was loaded with coal. There were no empties in that string, all that cars were loaded either with merchandise or something else. The doors were closed and sealed. After the chat cars, we had some empty box cars; here's an empty here, and then here's another one, a Rock Island way back here. They was the second and third cars from the caboose; there was just two empties back here.

I heard somebody say what happened at Paint Rock. I didn't see them get off. I found a snuff box on one of the string of cars, known as chat cars. It was in either the fourth or fifth of those chat cars. I found that snuff box as we were coming over the hill coming from Huntsville. That would be about the middle of these chat cars.

Cross examination:

All of these chat cars were loaded. Chat is ground up rock. Some of it is finer than others. Where they put it around platforms it is fine, and where they put it on the track it is not so fine. What I had that day was to go in the track. In the gondola in which I found the snuff box it wasn't so extra fine ground, not as fine as that they put around depots, some of it something like the little finger and some of it a little larger and some a little smaller. There were no great big lumps in there like my fist. The train left Chattanooga that day about nine thirty or ten o'clock. We got to Stevenson after twelve. To run from Stevenson to Paint Rock takes about an hour and ten minutes. I didn't know the girls was on there until we got to Paint Rock. I never found anything but the snuff box. I saw the girls at Paint Rock on the south side of the train. I was on the north side. I got off to ask what was the matter. They was out under a tree. I met the sheriff at the depot and he told us not to move the train until he told us to. Well, as I remember one of them was sitting down and the other one was lying down with her head in her lap.

Re-direct examination:

I didn't see them in the chat car at all. They was out under a tree when I saw them. I could see between these cars out under the tree, I didn't go there at all. The sheriff told us we could go and I gave the signal to leave.

I picked up the snuff box and looked at it, and then I threw it back down in the car; it didn't have anything in it. I opened it to see what was in it.

PERCY RICKS, sworn for the defendant, testified:

My name is Percy Ricks. I was working in March, 1931, for the Southern Railway as fireman. I know Mr. Turner that was in here a few minutes ago. I fired on the train on which he was the conductor. I was on the train that day when this trouble was supposed to have happened. When we left Chattanooga, the speed is limited to four miles an hour out of the yards, out of the yard limits, because of the Central of Georgia crossing; we stops there. The Central of Georgia tracks intersect the Southern Railway Company's tracks at Chattanooga. There is a wafer tank there. It is about the place where it is called the Hobos' jungle. There is a pole yard there. After we leave Chattanooga, towards Stevenson, it is slow until we get through the tunnel; it's just before we enter the tunnel that we begin to pick up a little speed. That is the tunnel in Lookout Mountain this side of Chattanooga.

I was firing the engine when we came into Paint Rock. I remember the train stopping at Paint Rock. When the train stopped I was on top of the water tank, that is the tender, down there. I could see down this train. I could see where there was a row of gondolas down this train. I saw women down there about the center of these gondolas back there. I saw them get off on the ground. It seemed like they was excited, and started back towards the engine, and there was a posse of men coming around the engine meeting them, about that time another crowd of people come up and they was surrounded. They had on overalls—possibly one of them may have had on a dress. It seems to me

like they had on overalls, but one of them may have had on a dress. When this train stopped, I saw these colored boys that were arrested. They were behind these gondolas; it seems that some were in a box car; I seen about two, as near as I can remember, get out of a box car where some men had guns, and some were around a tank car on that train. It seems that a couple of men were on top of the train; might have been that they were colored men on top of the train coming towards the engine; one of them got up that way; it seems that they were getting up about that coal car there; it seems they was going back down the cars towards where all these men was. The crowd of colored men was arrested behind these gondolas.

This train slowed up between Stevenson and Paint Rock. Through Stevens gap it runs pretty slow, between Scottsboro and Paint Rock. There were many stations between Paint Rock and Stevenson, numerous stations, depots. There were depot platforms at some of the places along this railroad. People were standing on the platforms to see the train pass close by. Through Scottsboro there is some houses kinder on a fill there; there is a high grade there where they go through, along west of the depot there is houses along there.

Cross examination:

My name is Percy Ricks. I was working at that time for the Southern Railroad. I have been fireman for fifteen years. Mr. Edwards, as near as I can come to my remembrance, I think Mr. Edwards was the engineer on that day. He's an old engineer. This water car here, this tender (indicating) resembles the tender on that engine. The tank is just behind the coal. The engine I was firing was not constructed exactly like that (indicating). It is practically the same thing. It is about the same all the way back; they have a running board here that's a little above. I was standing

on this running board on the water tank. I was in the engine btween Stevenson and Paint Rock. I first got out of the engine coming into Paint Rock, passing the depot at Paint Rock. I got out of the engine then. The train was still running then. it was coming to a stop, slowing down. I went up on the top to pull down the spout. It is customary for me to go up there like that so as to be there to pull down the spout the moment the engine comes to a stop.

I never counted the cars on the train between me and the car back here (indicating) that I have said the boys were taken from. Yes, sir, there was some empties back there. The empties these men were in seemed to be one or two cars between the coal cars, maybe a little further down, as near as I remember. Gondolas. They were filled with chat. Two got out of the box cars. There was empties back there. They wasn't getting out of the box cars that were loaded. They got out of a box car somewhere back there near that tank car. It could have been in front, and it could have been behind. I am not sure which one it was; somewhere though near that oil tank. I don't remember how many cars were behind this lumber car (indicating). I don't remember if the empties were pretty close to that or not. I don't know that I saw them all, these colored men that were taken from this train come back from there. I don't remember where this defendant was at the time (Haywood Patterson stands up). I don't remember where he got out. I wouldn't have known him if I had seen him. I didn't see a man get off the chat cars. I saw a man come over this car here (indicating), but it seems to me that it was a white man. I first saw this man come over this car somewhere between that gondola, just before you get to this green car (indicating). On top of these box cars here (indicating) is what I told the Judge. I can see down into these cars here (indicating gondolas) from the position in which I was standing. There was nothing to inter-

fere with my view of these chat cars, or these cars back here (indicating).

I do not know Mr. Hill, the station agent at Paint Rock. I pass there every day on my regular run. I have passed there a number of years. I have done most of running by there. I just don't know Mr. Hill. I don't know if Mr. Hill was with these girls down here along the chat cars. They were surrounded, I couldn't tell who it was. I saw the girls and some men; men on each side of the train. The train runs pretty slow between Stevenson and Scottsboro. Between Paint Rock and Scottsboro, Stevens Gap is about the slowest. It slows down to about fifteen to twenty miles an hour; twenty miles with a train like we had, I judge around twenty miles. That is the slowest it got down to between these two points. It went slower than that coming out of Chattanooga. On the run between Stevenson and Paint Rock we have a slow order of four miles an hour at Coal Creek Bridge this side of Stevenson; after leaving Stevenson we have a slow order of four miles an hour. I have done brakeman duty, I have never been employed as a brakeman. I have had experience getting off and on trains, box cars and gondolas while the train was running.

I don't know exactly how many colored boys I saw get off, or taken off the train back of the chat cars, it seemed to be a pretty good bunch, seven or eight, possibly more. I am pretty sure of that; there was a pretty good bunch back there. I was watching over and above the chat cars a pretty good while. Only one was taken off up here (indicating) that I saw. I wouldn't know if that was the defendant. I have never seen all of these defendants. I saw one taken off a car above the chat cars. One colored man came up there. In my judgment, seven or eight more were taken off the cars below the chat cars. There is a curve about a quarter of a mile from the station at Paint Rock. No part of the train was around the curve when it came to a stop.

Re-direct Examination:

Suppose a man is on this train and wants to stop the car, a brakeman could cut the air there between the cars. He would get down between the cars; there is a ladder that goes down between the cars, if he wanted to cut it, he could go down the ladder and cut it. If a hobo was riding here (indicating) and wanted to stop the train, he could stop the train, or notify the engineer that he wanted to stop the train by cutting the air, or he could do it with the train brakes; he can do it by using them. There is a brake on each chat car. He can slow it up by these brakes, by getting them tight enough. If a man put on the brakes that would not notify the engineer and conductor. If he cuts the air it would. Tightening the brakes wouldn't notify nobody any more than they would notice the train slowing down for some cause; it might show that there was trouble if the brakes was put on back in the train. If a man was in one of these gondolas and wanted to go to the engine there is nothing to prevent him, nothing to prevent him from going to the engine from the caboose.

HAYWOOD PATTERSON, sworn for the defendant, testified:

Direct Examination:

I am twenty years old. This is the third time I am on trial for my life in this very case. Once at Scottsboro right after this trouble happened. And I was tried before Judge Horton last Spring. I was about eighteen when this happened. My home is in Chattanooga, about 2½ miles away from the railroad. I and some other boys came down to the railroad on the morning of March 25, 1931 and boarded a freight train. The boys with me were Roy Wright, at that time twelve or thir-

teen years old; Eugene Williams, was the other one, he was thirteen, to my remembrance. I didn't have no other, except Andy Wright. I think he was about eighteen. Just we four got on an oil car. There were several oil cars on the train. That was towards the caboose.

I and Eugene Williams was sitting on the oil tank car. On the one nearest the caboose. I was here (indicating), Eugene was here (indicating) and the Wright boy was sittin' there on this lumber. Roy Wright was right here (indicating). The Wright boys were on the lumber car, and I and Eugene Williams were on the oil tank.

I remember coming through the tunnel coming out of Chattanooga. That is through Lookout Mountain. Just after we got through the tunnel the train was going pretty slow, wasn't going fast, and some white boys crossed the oil tank car there coming from the front of the train. To my remembrance, I think there was three or four white boys. These three or four white boys was the same white boys that I later saw in the Scottsboro jail. I remember seeing three or four white boys passing over the cars and the oil tank car. When they crossed over the oil tank car one of the boys stepped on my hand and liked to have knocked me off the train. I didn't say anything the first time, so the second time when he come by and liked to knock me off the train—when he passed by he brushed up against me. He stepped on my hand the first time. I did not say anything to him. Then he came back, passed by me again. He come brushing by me and like to push me off the car. I caught hold of the side of the car to keep from falling off. I said something to him the second time. The next time I told him if he wanted by to let me know and I would let him by, and he spoke up and asked me what I was doing on the car—and I told him the next time he wanted by to let me know and I would let him by, and he seemed to get mad, and we cussed each other for a while—want me to tell what we said? He called me black son of bitches, and nigger son of

bitches and such as that. I cussed him back. I called him mother-fuckers, son of bitches, and everything. All the boys spoke up. I know who that boy was. I found out his name in Scottsboro, what they called his name. It was Lester Carter and the Gilley boy. They were the two boys that passed up and down the car, that was two of them. One of those two I had trouble with. We cursed each other out. That was just after the train came out of the tunnel. The boys wasn't pleased over it; what we had said, and they went on further, and when the train slowed down they got rocks and chunked them back at we boys. Two got off the train above the oil tank car. Sometimes when the train goes up a high grade it gets kinder slow, and the boys would get off. It was going slow enough so that a man could hop off and pick up rocks, throw the rocks, and then catch a car two or three cars down below, a short distance behind where they would get off. It was impossible for them to catch the same car; they would always catch it back two or three cars below where they got off. They were throwing these rocks back there at us. That made us all mad. Then the train got into Stevenson. They was throwing the rocks. They never did come back, they just got off and got the rocks and got back on the car where they got off at the first beginning and then throwed the rocks back. They never did come back to our car.

I did not see any women on that train up to the time I got to Stevenson. I had not noticed any women in the Chattanooga yards before I boarded the train. When we got to Stevenson we got off the train for a while and stood 'round until it started off, then we got back on. The train stayed there a few minutes. Then the train pulled out. We got back on the same car we got off of, the oil tank car. When the train started them boys begun throwing more rocks. I don't know how many miles it was making. It was just crawling along. There was some creek there where they were repairing a

bridge. It was around that place that the white boys got off again and threw rocks.

After the boys got off and started throwing rocks some more colored boys come back over the top of the train. They had the same complaint about some white boys throwing rocks at them and we all decided that we would go up there and settle with these white boys. We went up there to fight it out with the white boys. I didn't count the boys, but there was at least ten or twelve, or thirteen. I knowed only the Wright brothers, and Eugene Williams. These others were strangers to me. All of us boys got together and got on top of the train and we went to, I think it was the third or fourth gondola, where the boys was in. I don't remember who was first who went over. I am one of the men that went over the top of the box car. All of us boys went along; there was two of them boys in ahead. I followed along. The other colored boys were behind me. We were all walking along on top of these cars until we got to the first gondola. In the first gondola I didn't see anything but this chet; we all jumped over. I didn't see no person in there. We all crawled over the other cars and got on the second gondola, then from the second to the third. When we were in the gondola cars we could see the white boys. They was in the fourth car from the box car towards the caboose. I saw about five white boys in that chat car when I went over to fight with them. That is all when the fight first started. White boys come from up that way from the next chet car. A couple of white boys come from that car. I didn't know them at the time. I know them now by seeing their name in the paper. One was that Gilley boy who was on the stand this afternoon. He was one of the two boys. The second boy was that Carter fellow.

I did not look into the car next to where the fight was going on to see who else was in that car. I didn't see any women in there. There was some scuffling and scrimmage between the white boys and the colored

boys. After they got through passing out some rocks, one had a piece of iron in his hand. I can't remember who had the iron. It was one of the white boys. Then there was a general fray for a bit. Some of the white boys jumped off themselves; I didn't see any one put them off. I didn't see anybody strike anybody and put them off. I did not have a gun in my hand. I did not have a pistol or weapon of any kind at any time while I was on that train. While the fight was going on all the boys got off the car 'scusin one boy, and he was in the car and some of these colored boys was tryin' to put him off. The train was pickin' up speed and I goes down there and tells them boys not to throw this boy off because the train was going too fast. That was Orville Gilley. That boy that was on the stand this afternoon. When that boy was hanging over there with his life in danger me and the Wright boy we got there and helped to pull him back on the car. We pulled him up into the car where we all had been fighting. The Carter boy he got off the train. There was another white boy besides Gilley that went over the train. I remember one runnin' up towards the engine. That was the Gladwell boy I later found at Paint Rock. That was one of the white boys that was later in jail at Scottsboro. I didn't know him. I seen all the boys. I would know him if I was to see him. I didn't know him by name. After the boy was pulled up into the car, with the help of the Wright boy the fight was all over then, and we went back to where we come from. The boys that was with me, us four. Eugene Williams and the Wright boys went back to where we come from, the oil tank car. When we got back to the oil tank car, we taken our seats, the very same way we were riding before.

I haven't seen any woman. I seen some women at Paint Rock. I did not see any woman at all up until the time I got to Point Rock. I had nothing to do with any woman in any way. I never saw no woman

until I was in Paint Rock. I was on that same car I had been riding on when I got to Paint Rock. The same three boys were still on that car, or about that car, when we got to Paint Rock. Some of the other colored boys come back by us. I don't know where the rest of them went. I didn't pay any attention to any of the others. We got back there before the rest of the boys did. I do not remember if I was first or last to leave that car where the fight was. I don't know who took me off of this oil tank car at Paint Rock. There was lots of people there, with shotguns, revolvers and pistols. The four of us were taken off together. The very party that started out together from Chattanooga. We stayed together until we were taken off at Paint Rock. After we were taken off the train at Paint Rock, they lined we boys up and leaded us up the road by the houses; I wasn't paying much attention; I'm telling you the best I know how; after they got us up there, one of the boys asked them what they had us for, and one of them said for fighting; they taken us up there and taken our names; they taken we boys up there, marched us up a little road, through a road there; I didn't see any street, but there was some stores there we boys stood up there near the road until some of them white fellows bought some rope from the store there and taken we boys and bound our hands together, and then put us on a truck and taken us to Scottsboro and put us in jail.

I had on a pair of brown trousers. It was a type of brown trousers that white would show against. A white spot would show against them. It was a pair of brown trousers with white stripes. There was no sign on my trousers that were white that would indicate semen on my clothing. The Wright boy had on a pair of dark trousers. There were no white signs on his pants. Eugene Williams had on a pair of overalls with a pair of pants under them. I didn't see any white stains, yellowish white stains on him. I didn't

see any on anyone's pants at all. We were carried to Scottsboro in a truck and put in jail. Some man went over our clothes, they searched us.

Defendants' Counsel asked the witness as follows:

Q. Did they take from your clothes a closed knife—what was in your clothes—to start with, when you were in jail, did anybody ask you to remove your clothes to keep as evidence?

The State objected. The Court sustained the objection. Defendant's Counsel excepted.

Defendants' Counsel asked the witness as follows:

Q. Was any of your clothing that you wore on that freight train ever produced before any jury, if you know, as evidence?

The State objected. The Court sustained the objection. Mr. Leibowitz excepted.

The witness testified further:

I saw some colored men, get off that train before it reached Paint Rock. I think there was two. To the best of my remembrance I think it was two or three. These men got off between Stevenson and Paint Rock. As I rode on that oil tank car, I passed several stations on the road, at least five or six of them until I got to Paint Rock. I seen people at some of the stations. Some I did and some I didn't. I heard no outcry on any part of that train especially any outcry from anybody that rape was being committed on that train. No, sir, I would have got off if I had heard any thing like that.

Nobody at any of the stations as I went along gave any warning to anybody that there was something wrong on the train. Not to my knowing. That was in broad daylight, about one o'clock. Around lunch time. We passed houses along the road. Plenty of them. I passed through Scottsboro. I saw people working along the

railroad there, on the farms and in the fields. I seen quite a few people at the station at Scottsboro. Right at the station. Nobody in that station did anything, so far as I know, with reference to that train. They did not call out for help, or say "stop" or anything of that kind. I can't give 'count of all of the cars; the one we had the fight in come along here, below the knee (indicating). That was the one we was in. I don't know about the rest of them. The fourth one had chet in it for a foot or foot and a half of the top of the car. My body, of course, would be visible to anybody along that railroad.

Cross Examination by Mr. Knight:

My name is Haywood aPtterson. I have got only one name, and that is Haywood. On March 25th, 1931, I was on this train between Chattanooga and Paint Rock. I was going to Memphis. I was going there to look for a job. I just ben out of work; I didn't have no job. I once had a job. I worked at grocery stores around there in Chattanooga. I had been out of work, I guess about a month; maybe more. The last place I worked was for Ab Deitch; he's a Jew. I worked for him about a year, maybe more. I, Andy Wright, Roy Wright and Eugene Williams left Chattanooga together. We were all going to Memphis. We were all looking for work. These smaller boys was just along. They had never been on trips with me before; that was the first trip. I been on freight train once before. I did not go with these boys. I did not know Clarence Norris and Charley Weems. I knew them when I was put in jail with them. I know them now. And have known them for two and a half years. I didn't know them at that time. I don't think Robertson was in the fight, Willie Robertson. I think I remember seein' Weems in the fight. I did not see Olen Montgomery. Eugene Williams was with me. He was one of the younger ones. I had trouble with some white boys

back here on the oil tank. I had some trouble with the white boys back there and they cursed me. I cursed them back. Andy, he cursed, too. Charley Weems was not in that crowd at that time, nor Clarence Norris. Roy did not cuss, too, nor Eugene—not to my knowing. I did not testify the trouble started after we left Stevenson. The trouble didn't start after we left Stevenson. It started directly after we left Chattanooga. That was an argument about stepping on my hand. They went on up towards the front part of the train. This train (indicating miniature train) is arranged about like the train was, on the day this trouble took place on the gondola car. I don't know exactly, so far as I know it was just about the same. It wasn't so long that we had been out of Stevenson when we all left the tank car and decided to go up into the gondola car. I didn't have the time, I don't know. I judge it was a couple of miles. The reason that we left this oil tank car and came up here was the fact that they began throwing rocks at us. They started throwing rocks after we was come out of the tunnel that's between Chattanooga and Stevenson. That is the time they were getting off the car and picking up rocks, after we left Chattanooga, and after we left Stevenson. I didn't count the number of times. I would say they got off at least twice. They didn't get the studd in the car. They got down off the train and got the rocks. Where the fight started was in the fourth car. That is where I joined the white boys. They got down off the car and got the rocks—after they left Stevenson. When they would get down and get rocks and throw them at me I was still on the oil tank car. They kept it up, continually. I didn't count. I know they throwed quite a few. I couldn't count the number of times. They did it more than twice. I don't know about more than three times. They was in the chet car when they got off the first time between Stevenson and Paint Rock. They was in the fourth car. From

Stevenson—when we left out Stevenson the train was running very slow,—not so fast. When they got down and picked up rocks, sometimes they would catch the gondola right back of them, then the second or third. It is not true that if they got off that car two or three times between Stevenson and Paint Rock and caught the car next to it back down here, they would have been on the oil tank with me. They got back as far as this car (indicating) throwing rocks at me. They did not get on top of the box cars and throw rocks at me. They would throw over the box cars. They throwed the stones over the box cars. They would get in that car and throw them over. They would get off the fourth car, and catch the car back of it. I said that it was going very slow at one time. I don't know how fast it was going. They got tired of the rock throwings.

I went through this car (indicating) into that car (indicating). Into the next car, and on into the fourth car. Then I had a fight with the white boys. Orville Gilley was not in that car then. No, sir, he wasn't in that car then. I don't know if he was in the next car with any girls. I don't know whether there was any girls in there. I was in the fourth car. I don't know how far I was from Stevenson when I got to the fourth car. Awhile ago I was taking a guess, I said I thought it was about two miles from Stevenson. To tell you the truth, we didn't have any trouble at all. Then we turned right around and came back and sat down on that tank car. We were on the oil car nearly all the time. We got off at Stevenson the first time, and went back there again when the train started and were there until the fight started, and then we got up and went up and engaged in the fight, and after the fight was over he went back to the oil tank car, forward to engage in that fight. I didn't count the cars; I don't know how many there was, I don't remember. The whole thing didn't start with the rock throwing; they passed down that oil car and nearly knocked us off.

I don't know Mr. Rousseau. I don't know if he testified in the case. I have seen all the witnesses, yes, sir.

The following then occurred:

Q. Did any one of the witnesses that went on the stand this morning, take you off this place back here (indicating)? A. To tell you the truth I was all excited; I didn't know what it was all about. I knew I had been engaged in fighting; there was so many people all around there I was excited.

Q. I will ask you, Haywood, if you, when you was tried at Scottsboro, didn't make the statement that you saw all of the negro boys who went into that gondola rape the women, but three? A. I don't remember making a statement like that. I remember making a statement. I don't know anything of it; I was threatened with death or being killed if I didn't confess; they threatened me if I didn't tell.

Q. Where did they tell you that? A. There at Scottsboro.

Q. Were you in court when they told you that? A. In court and over at the jail. Even the National Guard said they was going to kill us. I didn't have any friends and didn't know any one.

Q. Did they make these threats to you in the court room? A. Yes, sir, one of the fellows there in the court room, he spoken up and said "Give all the niggers the electric chair; there's too many niggers in the world."

Q. What do you say about going in the court room and saying that? A. I didn't get up there and say that.

Q. You say they told you to do it? A. They threatened me and said I did it; said I raped these women.

Q. All that in the presence of the judge? A. All in the presence of the judge and the whole courthouse there. I was sitting in a chair; sitting up in the chair.

Q. Do you say that the Judge heard what you are telling? A. Yes, sir, he ought to have heard it; we boys heard it.

Q. I will ask you if you were taken to jail in Gadsden? A. Yes, sir.

Q. The National Guard took you there? A. Yes, sir.

Q. They took you to jail there, where you were confined? A. Where, you mean at Gadsden?

Q. Yes, you were confined there with the other ones? A. Yes, sir, they separated some of us boys, put some of us together, some in another place.

Q. How long did you stay in there? A. I don't remember, I think about two weeks, if I am not mistaken.

Q. You boys were taken off the train at Paint Rock, and afterwards were confined in jail at Gadsden? A. No, sir, they put some of the boys in there with me; I was down on the second floor of the jail, and the rest of the boys was on the top floor, all but three of the boys that was with me.

Q. Who were they, Haywood? A. Andy Wright was one, Ozzy Powell and Willie Roberson, they was the three boys with me in Gadsden.

Q. You had the National Guard with you at that time? A. No, sir, they wasn't there at that time.

Q. Did they ever come to see you in jail? A. They come and took us back to Scottsboro.

Q. Do you remember the commander of the National Guard, Mr. Starnes? A. I remember a fellow around there, they called Major Starnes.

Q. I will ask you, if at Gadsden, in the jail there, in the presence of persons, with whom you were confined, whose names I do not have at the present time, that you did not participate in the raping, but that you saw three of the boys that they had there do it? A. I never said that, because I couldn't say it. I never seen any girls on the train. How could I say that when I didn't see any girls on the train?

Q. You testified in Scottsboro in your own behalf, didn't you?

Mr. Leibowitz: I am going to object to any testimony in Scottsboro under the ruling of the United

States Supreme Court that the entire trial was null and void.

The Court: I overrule your objection.

Mr. Leibowitz: We reserve an exception.

Q. You testified in your own behalf on the trial at Scottsboro, didn't you? A. You mean I got up on the stand like I am now?

Q. Yes? A. Yes, sir, I got up there.

Q. That was the trial against you? A. Yes, sir, that was my first time in court.

Q. Do you remember being asked this question: "Where did you first see these girls?"—do you remember being asked that question? A. Yes, sir.

Q. And didn't you reply to that question as follows: "I seen them after the train left out of Stevenson"? A. No, sir, I told them I seen the girls at Paint Rock.

Q. I will ask you if this question wasn't asked you: "The train was just leaving Stevenson"? A. I don't remember that.

Q. And didn't you answer that question, "Yes, sir"? A. No, sir.

Q. And wasn't this question asked you: "What kind of car were they in?" A. No, sir, I don't know as I was asked that question.

Q. And if, in reply to that question, you didn't say "In a gondola car"? A. No, sir.

Q. Were you not asked this question: "Where were you when you first saw them?" A. No, sir.

Q. And if you did not reply: "I was on top of a box car"? A. No, sir, I don't remember that. I don't remember saying that.

Q. And were you not asked this question: "Did you go down into this gondola car where the girls were?" A. I don't remember any one asking me that.

Q. And did you not in answer to that question say: "No, sir, I did not go down in there"? A. I don't remember that.

Q. Let me ask you another question, Haywood, when

you were taken to Scottsboro from Paint Rock, did they tie you all together? A. No, sir, they joined some two by two; two together and then one by one is my remembrance. I know I was tied.

Q. Did you all go together, all of you go from Paint Rock at the same time? A. Yes, sir.

Q. All in a car together? A. I don't know——

Q. I mean did you all get to Scottsboro? A. Yes, sir, we got there together.

Q. You were all there at the same time and you were searched? A. Yes, sir, and they searched us there after we was taken off at Paint Rock, and searched at Scottsboro also.

Q. Were you searched for a knife? A. I don't know what they searched me for. I didn't even have a cigarette.

Q. Did you see them take a knife off of Clarence Norris?

Mr. Leibowitz: We object to that.

Q. I will ask you, Haywood, if you were not asked this question at Scottsboro: "How many did you see down there?" A. I don't remember that question.

Q. And did you not answer: "A lot of men down there, there was about eleven men down there, about eleven or twelve down there." A. No, sir. I remember telling the people I didn't know anything about this mess. I don't remember saying that. I told them where I lived, I told them where I worked at, and I remember telling them about my father. I remember saying them things.

Q. Were you or not asked the question as to whether or not they were white or colored, and did you not answer that they were colored? A. No, sir, I don't remember that.

Q. Were you not asked this question: "They were all down in there but you, then, eleven of them?" A. I don't remember about that.

Q. And did you not answer: "Twelve of them down in there". A. I don't know about that.

Mr. Leibowitz: I respectfully object to these questions on the grounds stated heretofore.

Court: The objection is overruled.

Mr. Leibowitz: We reserve an exception.

Q. I will ask you, if you were not asked this question: "And you made the thirteenth?" A. I don't remember.

Q. And did you not answer: "Yes, sir". A. I don't remember saying that. I can tell you some of the things, what I remember saying over in Scottsboro.

Q. Your attorney will let you do that properly—were you asked this question at Scottsboro: "And you stayed on top of the car?" A. I don't know nothing about that.

Q. And in answer to that you said, "Yes, sir"? A. No, sir.

Q. Were you not asked this question: "Did you see all of those negroes ravish that girl"? A. I wasn't asked nothing like that.

Q. And did you not answer that question this way: "I seen them all but three"? A. No, sir, I don't remember that.

Q. And were you not asked this question at Scottsboro: "Name the ones you saw ravish that girl, and let them stand up when you call their names"? Do you remember that? A. No, sir, that is just a frame up.

Q. And didn't you answer that this way: "I don't know none of their names; Weems for one"—did you say that? A. I don't remember saying that.

Q. Were you not asked this question: "That is one you saw ravish her"? And didn't you answer, "Yes, sir"? Do you remember that? A. I don't remember saying anything like that.

Q. Do you remember being asked this question, and making the answer that I will read: "Name another one", that is the question, and did you not answer: "That fellow back there, I seen him down there, I did not see him ravish her, I seen him down there, I don't

know what they were doing"; was that your answer? A. I don't know nothin' about that.

Q. Were you also asked this question: "All right, they were all in the car and you stayed on top of the car?" A. I didn't, no, sir——

Q. The question propounded to you was this: "All right, they were all in the car and you stayed on top of the car?" A. No, sir, I never said that.

Court: They are asking you whether or not what he is reading to you is what you say now, but they are asking whether or not that question was asked you up at Scottsboro, and whether you made the answer that he reads. They are not asking you if that is a fact; they are trying to find out whether you were asked that on the other trial.

Witness: It is not so, Judge, I don't know.

Q. I will ask you if you didn't answer that question this way: "Three of us was sitting on top of the car"? A. No, sir, I don't remember.

Q. Were you asked this question: "Who was on top of the car with you"? A. No, sir, I wasn't asked that.

Q. And didn't you, in reply to that question say: "Roy Wright and Eugene Williams and Andy Wright"? A. No, sir, I didn't.

Q. Wasn't you asked this question: "You three stayed up there", and did you not reply to that question: "We four left Chattanooga together and we stayed together"—do you remember that? A. We left Chattanooga together and we was together all the time.

Q. I will ask you this, isn't it a fact that somebody in that car had a pistol? A. Yes, sir, I seen one boy in the crowd that had a pistol. I don't know the boy. I never seen him again. If I am not mistaken he got off the train.

Q. What I want to know, Haywood, is which one of the boys he hit with that pistol? A. I don't remember that.

Q. He hit one of the white boys with the pistol? A. He hit more than one.

Q. One of the colored boys? A. Yes, sir, one of the colored boys had a pistol.

Q. Do you know what calibre it was? A. No, sir, I can't name the gun.

Mr. Knight: I want to introduce in evidence the questions and answers made at the Scottsboro trial, as I have read them to the witness, from pages 50, 51 and 52 of the record of the trial of Haywood Patterson at Scottsboro.

Mr. Leibowitz: Is it admitted that the defense and the prosecuting attorney correctly read the questions and answers from the record of the Scottsboro trial, and that the official record of the Scottsboro trial is correct?

Mr. Knight: Yes, sir.

Mr. Leibowitz: That the questions and answers read by Mr. Knight were from the official record of the trial at Scottsboro?

Mr. Knight: Yes, sir.

Mr. Leibowitz: I shall want to introduce in evidence the parts of the record, of the official record, that I read to the witness, in accordance with our agreement.

Mr. Knight: All right.

The witness further testified:

I was confined in Kilby Prison some time back. In the same portion of the prison that Charley Weems and Clarence Norris were confined. We was in separate cells. I don't know if Burgess Cross was confined in these cells too. There was two or three white fellows. He wasn't directly across from me. He was kinder this

way (indicating). The cell I was in opened this way (indicating), and his cell door opened that way (indicating). I never could see him over once or twice. I could see him come to the door. I didn't hear him unless he talked very loud. I could hear him if he talked out, yes, sir. The fact about it is, he never did any talking to any one there; not to my knowing.

I was in jail in Scottsboro, Alabama, the morning after this offense is alleged to have been committed. I don't know whether any newspaper men came up there or not. I don't know. They had us all together at that time. The National Guard got there between 2:30 and 4:00 o'clock, that morning, next morning after I was in jail. I spent the night there. I didn't know Major Starnes; I didn't know him at that time. I have heard his name called there. I don't remember any one called Capt. Whitehead.

The following then occurred:

Q. I will ask you if then and there at that time Roy Wright didn't point out Charley Weems——

Mr. Leibowitz: We object to what Roy Wright did.

Court: I am not going to allow this defendant to be bound by anything Roy Wright said. I imagine there will be something else. Of course what Roy Wright said would not be admissible against this defendant.

Q. Did Roy Wright point out Weems at that time?

Mr. Liebowitz: We are objecting to that.

Court: Overruled.

Mr. Leibowitz: Exception.

A. I don't know what you mean by that.

Q. Did he point out Weems, in answer to a question asked by Mr. Harris, and in which question Mr. Harris

inquired of Roy Wright, what the different persons who had been taken off that train, did, at that time?

Mr. Leibowitz: We object to that.
Court: Overruled for the present.

A. No, sir.

Mr. Leibowitz: We move to strike out the answer?
Court: Overruled.
Mr. Leibowitz: Exception.

A. (Continued.) I can't tell you what was said when he come up there——

Court: You wait a minute and pay attention to his question.

Q. At the time that you were there, and in your presence, at the time Major Starners of the National Guard was in the jail, at Scottsboro, the morning after the alleged offense, I am asking you if Mr. Harris, who you say you don't remember——

Mr. Leibowitz: We object to that as being an involved question.
Court: Overruled.
Mr. Leibowitz: Exception.

Q. Did any person at that time, threaten you, or hold out any hope of reward to you, or offer you any inducement to make a statement of any kind?

Mr. Leibowitz: We object to that on the ground that it is incompetent, irrelevant and immaterial.
Court: I overrule the objection. I think that question would, of course, have to be answered in order for him to show any statement at all.
Mr. Leibowitz: Exception.

A. Yes, sir.

Q. I will ask you if Mr. Harris, in your presence, didn't ask Roy Wright, in substance, what part each of you had to do with this alleged offense?

Mr. Leibowitz: We object to that.

Court: Sustained.

Q. I will ask you if at that time, Roy Wright did not say, in your presence, and in the presence of these gentlemen that were there, that you——

Mr. Leibowitz: We object to that at the present time on the same grounds as the other question.

Mr. Knight: I hadn't finished the question.

Court: Go ahead with the question.

Q. That you had a gun?

Mr. Leibowitz: I object to that.

Court: That objection is well taken. Mr. Knight you must show, or undertake to show that any confession that was made was voluntary.

Mr. Knight: I am not sure whether I have done that.

The Court: You have already brought out proof that he was threatened. Are you going to ask if he made certain statements?

Mr. Knight: I am laying a predicate to impeach him. I haven't sought to introduce any statements.

Court: You can't show any confession or anything of the kind until you put in some more evidence. Your question to the witness about its being voluntary was wholly unnecessary.

Mr. Leibowitz: May I, to preserve my rights, move for a declaration of a mistrial?

Court: Yes, sir, and I overrule it.

Re-direct Examination:

The National Guards didn't come in the cell; they came in the run 'round. I remember the National Guard doing something to Roy Wright with a bayonet. They taken him out of sight, out of we boys sight. When I saw Roy Wright taken out of the cell there were no cuts on his face. When he came back into the cell he had a hole in his jaw, a small sized hole, a piece of flesh cut out of his jaw. That mark was on his face for a long time after that. It is still on there now. That mark on the boys face is almost identical with the point of a bayonet. The jury can see that now if the boy comes into the jury room. Roy Wright was about 12 or 13 years old at that time.

The only trial I testified in at Scottsboro was my own trial. I was then asked: "Did you see any negroes on top of either one of those girls?" And answered: "No, sir, I didn't I come back on top and sit down with the other boys". And that was the fact.

The following then occurred:

> The Court: Is that the same questions that were asked?
>
> Mr. Leibowitz: Yes, sir, the very same testimony and from the same record.

Q. Now, on page 56:

"Q. And you saw those girls?" A. No, sir, I didn't see no girls.

Q. Didn't you tell me awhile ago you saw them? A. No, sir, I didn't see any girls in there.

Q. You never did see any girls in there? A. No, sir, not till we got to Paint Rock.

> Court: Was that question asked you by the Attorney General a while ago?

Witness: No, sir.

Mr. Leibowitz: I am reading from the same record.

Court: No, sir, you can't do anything like that. It is the same trial, but it wasn't offered in evidence, it was simply identified, and he has asked certain questions from that record. You can inquire about those questions, but you are not authorized to go through that record and pick out something else, what he said about something else.

Mr. Leibowitz: Your Honor has ruled, and I don't care to argue about it. I simply ask your Honor, am I not right in saying that the witness has a right to offer other things which may explain away—for the benefit of the jury—other statements made simultaneously with other statements?

Court: You have had been all right if the record had been offered in evidence. Then you would have been correct, but as it is, it is not offered in evidence; it was only identified to the court as the official record of the other trial, what the witness said. It was necessary for them to read that in order to lay a predicate. You can't get away from that now by dealing with something else that was said in there.

Mr. Leibowitz: Your Honor, I say this with respect, and I think I am right about it. I thing I have a right to show, your Honor, that when a witness is alleged to have made a contradictory statement against his interest, I have a right to show that simultaneously therewith he made another and different statement to his interest.

Court: If the Attorney General wants to waive it, all right, but if it is put to me to pass on——

Mr. Knight: I am not waiving anything.

Court: I am ruling that out according to the accepted fundamental rules of law.

Mr. Leibowitz: Shall we have that identified, even if your Honor strikes out what I have read.

Court: You stated the page and the record when you read it, and that identifies it.

Mr. Leibowitz: It is conceded that what I did read was read from the official record, and that I correctly read the testimony of the defendant.

Mr. Knight: Certainly.

Mr. Leibowitz: Your Honor, that's all I want to say about this. I just want to get my exception to the court's ruling.

Court: Very well.

The witness further testified:

I testified in the Scottsboro trial, during the course of the trial, that I had not, at any time, seen any girls in the gondola cars. I didn't see no girls in no car; I seen them at Paint Rock. I testified at the Scottsboro trial, where I was on the witness stand, when I was asked about that, that I didn't see any girls in the car, and I didn't know they were there until I reached Paint Rock. That was my testimony there. I was in a state of fear when I testified in Scottsboro. I know what the punishment for rape is.

DOCTOR R. R. BRIDGES, sworn on behalf of defendants, testified:

I am a duly licensed physician in the State of Alabama and have been practicing my profession for a good many years, since 1913. I testified that on each of the trials at Scottsboro. They had four different trials in which different batches of defendants

were tried. I took the stand and testified in each of the four cases.

The following then occurred:

Q. Each time you were subpoenaed by the State? A. Yes, sir.

Mr. Knight: We object to that.

Court: Sustained, and the answer excluded from the jury.

Mr. Leibowitz: May I note my exception, judge?

Court: Yes, sir.

Q. You also testified last Spring before Judge Horton? A. Yes, sir.

Q. As a witness for the state?

Court: That is the same identical thing you have asked twice. You have the legal advantage of your objection.

Q. Were you subpoenaed by the state in this case?

Court: Now, that is improper. I have ruled on that, this is the third time. That's enough.

Mr. Leibowitz: I except to the court's ruling.

The witness further testified:

I made an examination of the woman, Victoria Price. Late in the afternoon of March 25, 1931, something about four o'clock, or after four. I was called to the jail. They have a sort of hospital room; it had a bed in it. There is no doctor's table there. I refused to examine her there. I didn't tell her to remove her clothes. I saw her with her clothes on. I don't remember what she had on. She was fully clothed. When I first looked at her, I saw no blood on her

face or on her forehead. I don't remember anything about her appearance, about the appearance of her nose, to show me as a medical man that her nose was swollen or any cuts on her nose. Abrasions, that means a scratching off of the skin, that is right. I found no cuts on her cheek, nor any marks on her cheeks. I don't remember any lumps on her cheeks. I did not see any blood coming from her mouth. I don't remember that her lips puffed up or swollen. I don't remember her exact condition. I don't remember whether I spoke to her or not. I left directions to have her taken to a place where I could make a more thorough examination. That was my office. She was carried over to my office, where I had a doctor's table. She was brought to my office with her clothes on. We removed her overalls and step-ins. I don't remember that she wore three dresses. She had on some dresses, After the dresses were removed, I examined her body a little later.

She was naked at that time. There was no blood on her back. There was no blood coming out of her vagina. No blood at all. The pubis is the hair in and about the private parts of a woman. I examined about her private parts; the hair was dry, that's the way I remember it. I found some scratches on her wrist, slight scratches, small ones. Scratches that were made by a person coming in contact with freight trains, and things like that, would be large scratches. I think these were smaller than scratches you would get that way. These were small. I couldn't tell where the scratches came from. There were some blue marks in the small of the back, about here (indicating). They were small affairs, little small knots. I couldn't tell what those small blue marks came from except that the body had come in contact with some object. I think there were some scratches on her arm, on the fore arm of the left arm. This blue mark was down on the small of the back. I don't remember any other one. This was done in 1931, and I am liable to forget.

I examined the vagina of this girl. There was seminal fluid on the walls of the vaginal canal. It was not in the canal. It was on the walls of the canal. We took a smear from the walls of the vagina; that is we took a small stick, hardly as large as a match, nine to ten inches long and wrapped cotton around the end of it and took this smear. That is something like children have on a lolly-pop. We wound cotton around that. We later pushed that stick up into the private part in the vagina, up around the cervix. We wiped around the cervix and then pulled the stick out. The cervix is the mouth of the womb in a woman, the neck of the womb. The womb itself is pear shaped. It hangs into the vaginal canal, that is with the small end hanging into the canal. Two tubes called the fallopian tubes are at the upper end of the pear. That describes in a general way the genital organs of a woman. I am not a gynecologist. A gynecologist—a specialist—deals with the diseases of women, diseases of the genital organs. What I pulled from the inside with the swab of cotton from the walls of the canal, I later smeared that on a glass slide. Then I put that glass slide under a microscope so that what was under it would be so magnified that I could see what you couldn't see with the naked eye. There is one thing we ought to mention here, and that is, in making this smear, we inserted an instrument and spread the walls of the vagina, and used a head light, and took this smear from near the cervix. That headlight is a little round disk with a small hole in the center, used by ordinary doctors. After I removed this swab of cotton that I told you about, I put that on a slide and looked at it through a microscope so I could see what was on that slide.

The discharge from the male is called semen It is a whitish, heavy cream colored liquid. The sperm is always in this liquid. This spermatozoa looks like a little tadpole. When this spermatazoa is alive, is potent, it swims around in this liquid by means of these little

tails. When I got this smear and put it under the microscope, I saw the spermatozoa, lots of them. One drop of semen may contain a hundred thousand of this spermatozoa. One discharge of a male may contain from three to six millions of sperm. When I looked at this spermatozoa under the microscope, that which I took from the vagina of Victoria Price, I saw a lot of these little tadpoles under the microscope. When they are alive, they move around. The spermatozoa from Victoria Price were non-motile. That means they were not moving; I can't say they were dead. That generally means though that they are dead. That is the way we usually considered them.

Cross Examination:

I did find semen on the walls of the vaginal canal. The one swab that I made I would not say that I extracted all of the semen. No, we wasn't trying to. That was made, as I said, by direct reflection; we looked through our head light. We took from the walls of the vagina this secretion and brought it out and put it on the slide, and then we took another one straight from the cervix. That is where we collected it from.

Re-direct Examination:

After a woman has intercourse, unless she goes to a bath room and takes an internal bath with a syringe, and washes out this discharge, this discharge of the male that remains would stick up against the walls of the vagina for a long time, but lots of it is taken up by the .....; that is the soft part, and a lot of it falls out, I don't mean that it falls out in a lump. The walls of the vagina are porous. The stuff in there, that sticks in there, stays in there longer, for some time, unless swabbed out or washed out.

The following then occurred:

Q. If a woman is not clean about herself, she may have had intercourse for a day or two days before that, and you would still find portions of semen still in there? A. I don't know how long that would be. I can't find any record on that.

Q. It varies, of course, am I right in saying that it would stay there many hours? A. I would answer that, that I don't know.

Q. A gynecologist would know? A. I don't know whether he would or not.

Re-cross Examination:

I testified that there was semen in the vaginal canal of Victoria Price. I testified also that it was non-motile. I couldn't say that it was dead. The vagina was not so awfully congested, but not normal. She had had an operation or miscarriage or something about five and a half months before that, she told us, and she had a laceration, and with this condition that left the interior part of the vagina more open than it would have been in a normal woman. If the vagina of a woman is more open than the vagina of a normal woman, the semen would have a better chance to fall out. We didn't make that test for acid. My opinion would be that her vagina was acid. An acid vagina retains the semen just as long as a vagina that is not acid, but the sperm wouldn't live as long. We have different opinions about how long the sperm would live in an acid vagina. That was asked me the other time. I don't claim to be an expert on that.

The following then occurred:

Q. Did you see any semen on Victoria Price anywhere else other than in the vaginal canal? A. I don't know hardly whether I can answer that question.

Q. I will frame it this way,—did you see anything that looked like semen?

Mr. Leibowitz: We object to that.
Court: Overruled.
Mr. Leibowitz: Exception.

A. There was a spot on the leg of Mrs. Price with coal dust or dirt over it, that was very heavy.

Q. Was it dry or not dry? A. My testimony last time was that it was hardly dry.

Q. Doctor, after your examination of Victoria Price, in your opinion she had had sexual intercourse? A. Yes, sir.

Re-direct Examination:

I can't tell this court and jury when that had taken place. I don't know how long it had been. I can't put hours and minutes on it. It might have been any time before. When a person is excited and unstrung, a doctor can sorter see that. If a woman is just shamming excitement, she isn't really excited, and she is just putting on a show, I cannot always tell when she is shamming. We have them that will throw spells, and a history to connect it up, and we can't tell at all. When she went off the table I read her pulse and it was normal. When a person, especially a woman is excited and under great nervous strain, the breathing is very fast, as a rule. I took her respiration count. I think they were both normal, is the way I remember it.

That spot that the attorney general referred to, somewhere on the leg, I didn't examine to determine whether or not that was spermatozoa. I can't tell now whether it was. No, it was purely an opinion. I can't tell definitely what it was. I don't know what it was. Outside of the vagina itself, on the walls of the vagina, I found no other definite evidence of any semen whatever, on any other parts of the body. I didn't see anything but that spot. I don't know what that spot was.

Re-cross Examination:

I made this examination after four o'clock.

The solicitor for the state asked the witness as follows: I will ask you this question, from your examination of Victoria Price, the vaginal canal, in your opinion was the intercourse recent?

Defendant's counsel objected on the ground that the doctor has already testified that he didn't know how long it had been. The Court overruled the objection and defendant's counsel excepted. The answer was:

A. I would say that it was recent, but I wouldn't put the hours and minutes on it. I couldn't do that.

Re-direct Examination:

Q. Would you say it was a day or two days? A. I am not going to put one hour, six hours or any other time.

Q. Or 20 hours? A. No, sir.

Q. Let me ask you this question, how much semen is discharged by the average young male person in one act of intercourse? A. I think about one to two teaspoons full.

Q. Six would discharge from six to twelve? A. That would be my idea.

Q. The younger the person and the more healthy, the more they would discharge? A. I would think so.

Re-cross Examination by Mr. Knight:

Q. If six negroes deposited with her from six to twelve teaspoons full of semen, that doesn't mean, does it, Doctor, that the vaginal canal would contain all of the semen, does it? A. No, not if it followed just as fast as it could be, the intercourse.

WILLIE ROBERSON, sworn for defendant, testified:

Direct Examination:

I am one of the boys that was arrested at Paint Rock. I hail from Atlanta, Georgia. I was seventeen years old in 1931. I boarded a freight train in Chattanooga on the 25th of March, 1931. I was suffering with some disease that day. It was "Sif" and gonorrhea. I left Atlanta to go somewheres in connection with the trouble that I had. I was bound for Memphis. I had a bad case of gonorrhea. There was three big sores on my testicle. I had terrific pains with whatever it was I had. It was difficult for me to walk and move about. My privates were badly swollen. I did not carry them in a suspensory. I had a stick to walk with.

Mr. Knight: I am wondering just the actual purpose of this testimony at the present time.

Mr. Leibowitz: Shall I state it.

Mr. Knight: If he was on trial there wouldn't be any doubt in my mind but that would be proper evidence. I don't recall that Victoria Price testified as to his having intercourse with her on this occasion.

Mr. Leibowitz: May I state that there is testimony that the nine negroes were taken off the train at Paint Rock.

Mr. Knight: Yes, but all nine of them are not shown to have had intercourse with Victoria Price.

Mr. Leibowitz: There is also some testimony that this same man engaged in hand to hand fighting, and that they jumped over into the gondola car.

Mr. Knight: The objection is withdrawn.

The witness further testified:

When I got on the train at Chattanooga I had that

stick with me. I had to walk with a stick in order to get around. This was a long train. I got on an oil tank car towards the caboose. I did not sit on that oil car with anybody. I stayed in the oil car until we got to Stevenson and when I got to Stevenson I got off the oil car and got in a box car. That box car was near where the caboose was. I stayed in that box car until the train got down to Paint Rock. I was not taken off that box car by one of the deputy sheriffs, one man. No, sir, a whole lot of them come there around me. When they came and got me I was laying down in the box car, up in the corner like. There was a white fellow sitting in the door. When the men come and took me off, they asked the white man if he wanted to get off, and he said "No", he just wanted them niggers off. They throwed my stick away. After they took my stick away they marched me up in front of a store. I had pain in walking to the store. It wasn't hurting so awful bad.

I had nothing to do with any white woman on that car. I sure didn't see any white women on the train until I got to Paint Rock. I did not have anything to do with, or rape anybody on that train. I did not jump off of any box car across into another car and engage in any fight, in the condition I were in. I did not know the defendant on trial until I landed in jail in Scottsboro. I did not know Andy Wright, Roy Wright or Eugene Williams. I did not see a boy on that train that I later found out was Ozie Powell. I didn't know any one. I have been in jail ever since I was arrested.

Cross examination:

I say that I live in Atlanta, Georgia. I left home to go to Memphis, Tennessee. I ain't struck up with Haywood Patterson. I didn't see all of these boys that were taken off the train at Paint Rock before they were taken off. I didn't see them on the train at all. I didn't see any col-

ored boys on the train. I didn't see any colored boys at all. No, sir, I was in too bad a fix at the time; I wasn't paying no attention. When I got on the train at Chattanooga I got on an oil car. I knows it was an oil car; I don't know about that there. I have seen a gondola, yes, sir. I seen some cars on that train, yes, sir, that somewhat resembled these eight cars. I was in the 7th car from the 'boose. I got off the oil car at Stevenson. When I went on up to change I didn't see some colored boys get on the train, as well as some white boys. I didn't see any hoboes at all on the train. I didn't pay that much attention. I was after gettin' on there before the train started. I got back into one of the empty box cars. I can't point it out on that train. I did not get out until I got over to Paint Rock. I did not go up into this chert car and engage in a row in there with these white boys. Nothing like that happened. While I was in the box car going towards Paint Rock there was a white fellow. I did not know him at that time. I have not seen him since. I was in the courtroom when this case was tried here in the Spring. I haven't seen this white man no more since they took me off the train at Paint Rock. When they took me off this fellow said that he didn't want to get off, he said he wanted all the niggers off the train. There was a bunch of men there. I have not seen any of these men at any of these trials. I seen some men that was down there that come there from Scottsboro, one of the sheriffs. He said that he was sheriff. He was present at the time the statement was made. I have not seen any of these other men at this trial or at any of the other trials. I testified at Scottsboro.

OZIE POWELL, sworn on behalf of the defendant, testified:

Direct examination:

My name is Ozie Powell. I was on this train on March 25, 1931, coming out of Chattanooga that this trouble is alleged to have occurred on. I was going to Memphis. I was not acquainted with any of these boys from Chattanooga. I did not know any of the boys from Georgia. I was riding by myself. I was riding between a box car and a gondola. I know where they claimed they had the fight on the car. I was between that fight and the engine. I saw some of it.

The following then occurred:

Q. Come down here and show us where you were? A. I was right here between this box car and this box car and this gondola car, the fourth car from where they was fighting at (indicating place on train).

I was in between two cars. The fight was in the fourth car from me. I did not have anything to do with the fight. I did not know what the fight was about. I did not see any women there. The first time that I saw any women was when we got to Paint Rock. Somebody arrested me at Paint Rock. I was still on the train. I did not have any meeting or argument with any of these boys that were traveling with them. I had gone from Atlanta to Chattanooga. I intended to hobo a ride from Chattanooga to Memphis.

I did not hear any shooting on this train. When the train stopped at Paint Rock I don't remember anybody climbing over my head and going towards the engine. I was the only colored boy between the gondola there and the engine, as far as I know.

Cross examination:

While I was in between the gondola and the box car, I

saw the colored boys come over the box car over my head and go into the gondola. After I saw them go into the gondola car, I did not look into it, I didn't look in there but I seed them when the train would go around the curve. They came right over my head. I didn't count how many there were. In my judgment or recollection, there were five or six or more. I was standing up between the gondola and box car next to the engine. My head was not up above the top of the gondola. It lacked about three or four feet or more. Pretty soon after I saw these colored boys go into that gondola, I saw these white boys jumping off the train. I saw the white boys jumping off as soon as they got into the gondola. I did not hear any commotion in that car. I did not hear anybody say anything after they jumped into the gondola. I did not sorter climb up on that gondola and look in.

I testified in this trial in this court house at the last term.

The following then occurred:

Q. I will ask you, if on that trial, counsel for defendant didn't ask you this question: "What happened when you got in there between the box car and the gondola car, tell the jury what you saw"?— A. I seen them fighting——

Court: Let me explain to you. They are not asking you now what you saw, they are asking what you testified in this trial, they are asking you if you said that?

Witness: Yes, sir.

Court: What did you say?

Witness: I got in between the box car and the gondola and saw some boys come over—cross over my head.

Q. I am asking you this, if you were not asked this question: "What happened when you got in there be-

tween the box car and the gondola car, tell the jury what you saw"; and didn't you answer: "I seen some boys crossing over my head and I didn't pay them any attention, and in about two or three minutes I climbed up to see what was the matter and I saw some boys hopping off the train, white boys"—you said that, didn't you? A. Yes, sir.

Q. And you were asked this question: "These boys that came over you were colored boys"? and you answered, "Yes, sir", is that right? A. Yes, sir.

Q. And then the question: "Just point out where they came from, point out where you actually saw them go"? And didn't you answer: "I was down between this car and a gondola car (indicating) and some boys hopped off of this box car into this gondola car (indicating) and I climbed up on top to see what was the matter, and in the fourth car from me I saw some white boys"—you said that? A. Yes, sir.

Q. Then this question: "White boys and colored boys at that time" and you answered, "Yes, sir"—did you say that? A. Yes, sir.

Q. Then this question: "That is where the fight was going on?" and you answered, "Yes, sir", did you say that? A. Yes, sir.

I saw that fight going on in the fourth car. I didn't look at them any time; I just looked at them. I did not see some girls, some white girls in there. I did see them when the train got to Paint Rock. They were going down the railroad track; a crowd of mens was around them.

OLEN MONTGOMERY, sworn for the defendant, testified:

Direct Examination:

I am Olen Montgomery. I was living at Monroe, Georgia, at the time I was arrested. I was going on this occasion to Memphis. I got on this train where this trouble is said to have occurred at Chattanooga. My eyes are affected. One of them is out, and the other one is very weak. I was on an oil car on this train that the trouble is alleged to have occurred on. I did not know anthing about the women being on the train. I remember seeing at least one car like these gondolas (indicating minature) that had cross-ties on it; I didn't pay any attention to that, not to the rest of them. I got on the oil tank. I was pretty close to the rear on the tank car. That was in the neighborhood or near the caboose. I was in an oil car.

The following then occurred:

Q. Do you mean an oil tank car something like that (indicating on minature)? Can you see this? A. No, sir, I can't tell the difference in them.

Q. You can't tell the difference between one car from another? A. No, sir, they are too small.

I can't tell how many cars I was from the rear end of the train. I can't tell you how far it was from the front or the rear. I know it was more back to the rear than to the front.

I did not leave this oil tank car until I got to Paint Rock, Alabama. I did not at any time leave that oil tank car to go over into a gondola car. I did not engage in any fight. I did not do any fighting. I did not see any women at all. I did not have anything to do with any woman. I did not see any women when I got to Paint Rock. I was still on this train. Some-

body arrested me there. Some fellow come there and jerked me off. I was sittin' there, half asleep, and he come and jerked me off. I asked him what he was doing, and he told me to get off, and I climbed down and skinned my ankle on the end of the cros-tie. They arrested me there. They put ropes on us and carried us to Scottsboro.

I been near sighted all my life, and one eye been out for about eight years. I did not know Haywood Patterson at that time. I did not know any of these other boys. No, sir.

Cross Examination:

I had started to Memphis. I don't remember the day, what day I left home on this trip. I know the day I left Chattanooga. I remember how many days I had been on the road but it wasn't as much as a week though. It was some few days. When I got to Chattanooga, I just got on that oil tank car. Nobody sat with me as I came along. I seen the other boys walk side of the car, the train was standing still. I didn't know any of these other fellows. I did not come in contact with any of them. None of them sat around on the oil tank I was on, wasn't none of them there where I was at. When I got to Stevenson I did not change cars. I saw one boy get off and go get cigarettes. I didn't speak to him. I sat on that oil tank car all the way until I got to Paint Rock. I never did see any woman on the cars at all.

ANDY WRIGHT, sworn on behalf of defendant, testified:

Direct Examination:

I am 20 years old. I was about seventeen when this trouble happened. I had my little brother with me.

He was thirteen at the time. Haywood Patterson, my little brother, Eugene Williams and I started on this freight train from Chattanooga. I don't know exactly how old Eugene Williams was but he was about twelve or thirteen.

I have a sister, Beatrix Maddox. She is not here in the witness room. I lived in Chattanooga when I started off on this train. I get on this train at Chattanooga. About 10:35 I get on an oil tank with Haywood Patterson, Eugene Williams and Roy Wright. I was sitting facing the engine on that oil tank. There was some white boys that passed backwards and forwards on that oil tank. One of the white boys stepped on Haywood's hand, and kinder pushed him, and Haywood asked him to let him know when he wanted by, and he would give him room. He told him it would make no difference if he knocked him off. They went on further, and then got off and got some stones and commenced throwing them at us. The train was going slow when he hopped off the car to get the stones; it was going up grade. That happened two times. After a while when the train got to Stevenson, it stopped there.

After we left Stevenson the white boys got up and went to this gondola car, and went to throwing rocks back at us again. Some more boys come over the top and made complaint, and wanted us boys to go with them and have it out with them white boys. We were all together on the oil tank. Then we all decided to go over and fight it out with the white boys. I am one of the boys that went over to the gondola where the fight took place.

The following then occurred:

Q. Step down here and show us what car you was on and where the car was that the fight took place on? A. I was sittin' down here (indicating car).

Q. Indicating for the record somewhere on the oil tank car towards the caboose? A. Yes, sir—my brother was sittin on the flat car and Eugene Williams was sit-

ting by him, and me and Haywood was sitting together, and when we decided we would got and fight it out, we climbed over these box cars (indicating), and climbed over three of the gondolas, and the fight taken place in the fourth gondola from this end (indicating 4th gondola from box car at rear).

I wasn't doing any fighting in that gondola; I was in there. There were more colored boys than there were white boys. While that fight was going on, there were no white women in that car. There were five white boys in the car when the fight started. Two more white boys came in that car. They came from up towards the engine. There were some more gondolas towards the engine. I don't know whether or not it was the next gondola they came from. I just know they came from towards the engine. I have learned since that time who one of those two white boys were; he was Orville Gilly. I have heard talk of a boy named Lester Carter. I never saw him.

When the fighting was going on, the white boys, they had some brick, or a piece of iron, and struck one of the colored boys, and one of them took a pistol by the barrel and hit them with the handle of the pistol; about that time two more white boys come over, and in the fight one of them run up towards the engine, and one started to get off, and some of the colored boys that was fightin' him was trying to make him get off, and Haywood said, "Don't make that boy get off, he might get killed" the train was runnin' so fast—and Haywood went over and taken hold of him, and was holding him, and also I went and took hold of him, and we pulled him back up.

Haywood and I pulled him back up into the gondola. We all let him stay in the gondola. After we pulled him back in the gondola, I did not see where the Gilley boy went. That was the finish of it. I and the rest of the boys went back to the place where we came from when the fight was over. I was taken off the oil tank

car of the train at Paint Rock; the very same car that I started out from Chattanooga on.

I did not see any girls in the gondola next to where the fight was going on. I did not see any women at all, until I got to Paint Rock. I did not ever attack any woman on that train.

Cross Examination:

I knew Haywood Patterson at that time. The other boys along with me were Haywood Patterson, Eugene Williams, Roy Wright—that is my brother. Them was all I knowed personally. I had not ever seen any of the rest of them before. We had all four started from to Memphis.

When we got on the train that morning I did not see any girls on the train in Chattanooga. When we got on, two of us was on the flat and two on the oil tank, we got on this tank car. We four were right close together, right facing each other. Me and Haywood was on the oil tank, my brother and Eugene Williams were on the flat car. I do not know which one of the white boys it was that came along and stepped on Haywood Patterson's hand. At the time he stepped on his hands he told him if he wanted to get by again to let him know and he would get up. The same fellow that stepped on Haywood's hand never came back by Haywood, he went up further. He told him it didn't make no difference if he fell off. All he said was what happened the first time. Rocks was coming from over there. The white boys was over that way. The same white boy that stepped on Haywood's hand was in the gang. They threw rocks from some point on the train. They didn't get down—they would swing down when they got the rocks. They did not get off the train until it got to Stevenson. Some jumped down, and some swung down. Both of these things happened. Five were together at the time they were throwing rocks at us all. They were

standing on the first gondola there, near that first car from the box car. I could see them at the time. They were down in the gondola. They was standing up then. Right out of Stevenson all we colored boys got up and went to have it out. Clarence Norris and Charley Weems made a complaint, and we all made an agreement to go over there. They come from the back. I don't exactly remember how many there were in all. There were four of us togther. A crew of boys came from the back. At the time we all started up towards the gondola car I didn't count them and I can't tell you how many there were but it was about eight or nine.

I didn't know Ozie Powell nor Olen Montgomery nor Willie Roberson. They were not along in the fight.

That whole crowd didn't go into the gondola car with us. There were us six, and some others that I didn't know. When we got over there, they was in the fourth gondola then. When we went in, all of us jumped over into the first gondola car from the end of this box car. We jumped off the box car in the first gondola, then we climbed into the second gondola, and climbed over into the third gondola, and walked on over and climbed over in the fourth gondola, and there is where the fight taken place.

When we got in there the white boys had a piece of iron, sticks and stones. When we got into that fourth gondola the first thing anybody said was when we asked them why they wanted to throw the rocks at us. The colored boys, in fact all of us asked them. Every one said that same thing. They told us they didn't care nothin' about niggers, that we ought all to be dead. I don't know exactly which one said that. I haven't seen the fellow that said that around any of these trials. The white boys cursed the negroes; they called us sons of bitches, and black bastards. The negroes said the same thing back and then the fight took place. All that talking backwards and forward, from one side to the other, that all took place before any licks were ever

struck, or any fighting at all took place. The first fellow that started the fight was the white boys. I don't know who the first white boy struck. I took no part in it. Haywood was trying to protect himself. Charley Weems was in the fight. Clarence and some more of the boys I didn't know was in the fight. I never did get into it. The white boys was entertainin' the rest. I didn't entertain anybody. I was standing looking at my brother to see that he didn't get hurt. I didn't ever get hit during that whole time. The pistol was there when the fight started. I don't know who had the pistol; one of them had it; the one that had it got off. I don't know his name. He got off after the five white boys was put off. I don't know exactly how long it took us all to get the five white boys off. After we got the five white boys off, Haywood seen the boys trying to put this other boy off, and told them not to put him off that the train was going too fast. Haywood and I pulled him back on the train. After we got him back on the train we left him there and went back to where we started from. This fight occurred after we left Stevenson. That fight didn't last so long. I haven't no judgment about how long that fight lasted. When the fight was over the rest of the colored boys I think one of them went on over the oil tank car. Me, Haywood, Eugene Williams, Roy Wright and the rest of the boys climbed over into the third gondola and went on back to the oil car. We all stayed on this oil tank car until we got into Paint Rock. At the time the officers and some other men came up, me and Haywood were all still on the oil tank car. My brother Roy and little Eugene Williams was sitting on the end of the cross tie car, right there at us. No one else was back there on those two cars, immediately near us, at the time we got to Paint Rock. I did not see the other boys taken off the train. I saw the officers bring some away from the train. I didn't see them leave away from the train with them. They was close in by the store when I saw them. I don't really know where anyone was taken off the train except us four.

I never did see any girls on the train. When I was at Stevenson I did not change my place. I was still seated on the oil tank car. There was some more tank cars towards the caboose. I seen one or two. I seen one tank car back of these box cars. I have no judgment about that. I didn't pay any attention to whether there was anyone on those other tank cars.

(Court recessed until next morning at 8:30.)

LESTER CARTER, sworn for the defendant, testified:

Direct Examination:

This is Lester Carter. I am 22. That would put me about 18, back in March, 1931. My home at that time was in Knoxville, Tennessee. I was born and raised in that part of the country. I know a woman by the name of Victoria Price. I knew her somewhere around fifty or sixty days before March 25, 1931, when this freight train ride took place from Chattanooga towards Huntsville. I met Victoria Price in the City Jail at Huntsville, Alabama. I was confined in the City Jail.

The following then occurred:

Q. Was she confined in the City Jail?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Leibowitz: We except.

I knew a man named Jack Tiller, too. I met him in the jail in Huntsville. I later saw her occasionally or frequently. I was very friendly with her. That was fifty or sixty days before this ride. I knew a girl named Ruby Bates. I got acquainted with Ruby Bates

through the Price girl during the time I was serving time in jail.

The following then occurred:

Court: Never mind about the time you were in jail.

Q. Did you and Victoria Price, Ruby Bates and Jack Tiller go out together? A. Yes, sir.

Mr. Knight: I object to that.

Court: Sustain the objection; that is not evidence. Mr. Witness, you must not answer so quick. Whenever a question is asked and objected to, and the Court holds that it is illegal, that puts it out of the case just as if it never happened.

Mr. Leibowitz: We except.

Q. I want to know,—now don't answer this until the Court says you may,—if the night before you left Huntsville before this train ride, whether or not you, Victoria Price, Ruby Bates and Jack Tiller, that is you with Ruby Bates, and Jack Tiller with Victoria Price, in the presence of each other, did not have sexual intercourse——

Court: That has been raised so often, Mr. Leibowitz; I have ruled on that very legal point a half dozen times, and there can't be anything in it except a vicious attempt to get something before the jury that I have ruled is improper.

Mr. Leibowitz: Your Honor, I won't press it further. I want to note an exception to the Court's ruling, especially in view of the Court's reference to counsel——

Court: I am ruling according to the law as I understand it.

Mr. Leibowitz: I do this in justice to my client, in view of the Court's characterization that defendant's counsel made a vicious attempt to force testimony into the record, I want to move for a mistrial.

Court: I decline to do that. If that particular word is offensive to you, I will withdraw that. Gentlemen (to the jury), you will pay no attention to the expression "vicious attempt". Don't let that enter into your consideration or in your minds.

Mr. Leibowitz: We respectfully except.

I started out at Huntsville, with Victoria Price.

The following then occurred:

Q. Where did you go from immediately before you left Huntsville, from what part of town did you go?

Mr. Knight: We object to that.

Mr. Leibowitz: I want to show you how they got to the station, what the arrangements were; that is in rebuttal of Victoria Price's testimony that she never saw this man in her life before the trip.

Court: I will let that question be asked.

Q. Tell us how it was you come to go to the station?

Court: I wouldn't allow you to ask that, "How come them to go".

Q. Did you have a conversation with Victoria Price with reference to leaving Huntsville, you and she and Ruby Bates, giving the details.

Mr. Knight: We object to that.

Court: I am not going to allow him to go into details. I will let him show that he had a

conversation, but I will not permit him to go into details. I will permit him to ask the witness whether he had any conversation with Victoria Price before they left Huntsville to go to Chattanooga. That covers the point.

Mr. Leibowitz: We reserve an exception to the Court's limitation on the question.

I had some conversation, without going into the details of it, at Huntsville, with Victoria Price, Ruby Bates, and also Jack Tiller, in company with them, relative to leaving Huntsville and going somewhere. The day and night before we actually left that arrangement was made, around the railroad yards in Huntsville, up near the Lincoln Village.

The following then occurred:

Q. Who was to go on that trip?

Mr. Knight: We object to that.
Court: Sustain the objection.
Mr. Leibowitz: We except.

Pursuant to that arrangement, on the following day, we met at the railroad yards in the city of Huntsville. Ruby Bates and Jack Tiller met there besides me and Victoria Price. It was somewhere in the afternoon.

The following then occurred:

Q. What happened there, what occurred when you got to the railroad yards in Huntsville?

Mr. Knight: We object to that.
Court: I sustain the objection.
Mr. Leibowitz: Exception.

Q. May I ask what happened with reference to getting on the train at Huntsville? A. We decided for three of us to go along——

Mr. Knight: We object to that.
Court: Objection sustained.
Mr. Leibowitz: Exception.

Victoria Price, Ruby Bates and myself got on the train.

The following then occurred:

Q. What happened to Jack Tiller?

Mr. Knight: We object to that.
Court: Objection is sustained.
Mr. Leibowitz: Exception.

Ruby Bates, Victoria Price and I got on the inside of a box car. I talked very little to Victoria Price and Ruby Bates on the way from Huntsville to Chattanooga.

The following then occurred:

Q. What was it you said with reference to Jack Tiller?

Mr. Knight: We object to that.
Court: I sustain the objection.

Q. Who else was in that box car?

Mr. Knight: We object to that.
Court: Sustain the objection.
Mr. Leibowitz: Exception.

Q. Did you cross the state line of Alabama into Georgia and the state line into Tennessee?

Court: That's unnecessary, we all judicially know they had to do that to get to Chattanooga.

Q. Was anything said about crossing the state line,

was any reason given by the prosecutrix, anything specifically said, or directly about that? A. Yes, sir.

Q. About these women crossing the state line, the two state lines with you, as to what the women should do in case you all were caught?

Mr. Knight: We object to that.

Court: Overruled—wait a minute, I sustain the objection.

Mr. Leibowitz: Exception.

Well, whatever talk we had, we finally got to Chattanooga. These women had on overall trousers, ladies hats, overcoats, ladies shoes and ladies hose. We arrived in Chattanooga about eight o'clock, around eight o'clock in the evening. We left the train in the railroad yards there.

I first met Orville Gilley leading away from these railroad yards, on a spur track. Victoria Price and Ruby Bates were with me; the very same girls that were together with me on the train. I was with Gilley then all the rest of the night.

The following then occurred:

Q. Where did you next see Victoria Price and Ruby Bates? A. They was right there on the car then.

Q. Where did you next see them after that?

Mr. Knight: We object to that.

Court: The objection is well taken, sustained.

Mr. Leibowitz: We except.

I was with Gilley all of the time from the time we arrived in Huntsville up until the time when we got back on the train to come to Huntsville. I wasn't with these two girls all the time, me and the fellow Gilley were together all the time.

The following then occurred:

Q. Listen Carter, let me make it plain to you, except for one or two occasions when you left either girl for a short while to go somewhere away from the Chattanooga yards, where you arrived in these railroad yards that night, from then until the following morning, did you——

Mr. Knight: We object to that, we don't want that to go before the jury. I think I know what he is after.

Court: Yes, and I imagine this jury will follow the instructions of the court. I told them not to pay any attention to anything that I ruled out.

Mr. Leibowitz: Shall I put the question?

Court: Yes, if you want to.

Q. Now, Carter, did you leave these girls at any time? A. Yes, sir.

Q. How many times? A. A couple of times.

Q. Where was that?

Mr. Knight: We object to that.

Court: Sustain the objection.

Mr. Leibowitz: Exception.

Q. The couple of times that you went away——

Mr. Knight: I object.

Court: Don't interrupt until he puts the question.

Q. Now the couple of times that you left, were you gone for more than a few minutes each time? A. No, sir.

Q. Except for the few minutes that you were gone, were you continuously with Ruby Bates and Victoria

Price, all through that night together, with the fellow Gilley right near the railroad yards in the City of Chattanooga and the Hobo Swamp there?

Mr. Knight: We object to that.
Court: I sustain the objection. Gentlemen that is excluded and you will pay no attention to the question, or answer—I believe the witness did answer "Yes".

Q. Were you with her continuously that night?

Mr. Knight: We object to that.
Court: I sustain the objection.
Mr. Leibowitz: Exception.

Both Gilley and I went and got food that night in the evening and in the morning, for supper and breakfast.

The following then occurred:

Q. Did you see Victoria Price and Ruby Bates when daylight came the following morning?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Leibowitz: Exception.

The train started out from Chattanooga back towards Huntsville near about noon time. It was after ten o'clock in the morning. I saw Ruby Bates and Victoria Price just before we boarded the train, the train that we all got on in the railroad yards in Chattanooga, Tenn. Orville Gilley, myself, Victoria Price and Ruby Bates were there. There was some other people along, but I didn't know the others; other people sitting on the back watching us board the freight train.

The following then occurred:

Q. For the purpose of identification, now don't answer this if objected to until ruled on by the court, did you see any negroes, or did you have any encounter with any negroes during the time that you and Ruby Bates and Victoria Price and Orville Gilley were together at Chattanooga? A. Yes, sir.

Mr. Knight: We object to that.

Court: I don't recall any testimony of anybody about any difficulty in Chattanooga.

Mr. Leibowitz: I think the jury should be retired so that it may be heard only by the court; it has reference to a consortion and cohabitation between negroes and whites.

Court: You needn't put that in at all.

Mr. Leibowitz: We reserve an exception.

In leaving Chattanooga, Tennessee to come to Huntsville, Alabama, we boarded the train on the back end of a box car—an oil tank car. Victoria Price, Ruby Bates and Gilley and myself boarded that car. We boarded this train and we rode there on this train until the train comes out of the tunnel, and then we was able to get on the top of the box cars. Orville Gilley, myself, Victoria Price and Ruby Bates. Then later there was a fight started on the train with the throwing of stones or pieces of coal at one another, negro boys and white boys, and from that the train stopped at Stevenson, Alabama to take on coal or water or something.

At that time, I was still on top of this box car when we got to Stevenson. When we arrived at Stevenson, Victoria Price, Ruby Bates, Gilley and myself, the four of us got off from on top of this box car. We went down the train some few cars and got up on top of gondola car, loaded with small magnesia stone, or something like that. I remember a string of about six, seven, eight or nine gon-

dola cars hooked up together along there. That is the engine over here (indicating on miniature train); this engine was headed from Stevenson to Huntsville. I don't want to put my hands on any certain car I got into with Ruby Bates, Victoria Price and Orville Gilley. I went to ride the gondola car somewhere along here; there was gondola cars back of us. I was in some car about the center, I would think. I cannot give you the number of cars between the car I was in and the box cars on either end of the string. Nobody else got into that car besides me and Gilley and Victoria Price and Ruby Bates. Nobody got into that car besides us four. No one in there when we four got in.

As the train came into Stevenson some of these white boys asked myself and Gilley would we help crowd these negro boys off the train; they said if we had any man in us we would see that these negro boys were put off the train; so after the train left these white boys and negro boys got into a fight; they came up closer to the car in which we four was riding in. After the train started out of Stevenson the scrap started between the whites and the blacks. There were some white boys in a gondola near where we were riding; they came closer. They got within talking distance. The white boys came to the next car. They came from the direction of the caboose. These boys were fighting. As these boys came up to this car close to where Orville and myself was, they asked us that we help them in the fight with the negro boys, and I started to join in the fight myself. I did not leave the car that I was riding in, together with Victoria Price, Ruby Bates and Orville Gilley. I got out of that car to engage in the fight. I went to the joining car to engage in the fight; not in the car, but on the side of the car; the joining car toward the caboose and not toward the engine. That is the car the colored boys and the white boys were fighting in. I don't know who went with me; I was preparing to look out for myself. I don't know what happened to Orville Gilley. I was on the back end

of this gondola on which we were riding; I think I had one leg over the top of the side. I didn't see whether he went into this fight with the colored boys. I jumped off the train. In my best knowledge nobody got into the same gondola car with Victoria Price outside of me and the fellow Gilley.

If it is testified here that Victoria Price, I, Ruby Bates, and several other white men were together in one gondola car leaving Stevenson, I wouldn't say that. I would say us four were together. When I left that train I walked back to Stevenson, Alabama. I met several of the other white boys there at Stevenson. I walked back with some of them. None of these white boys had any wounds that I know of that were treated in any way in Stevenson. They were not as far as I know treated by any doctor in the jail at Scottsboro. After I got to Stevenson, I left there to go some place; they taken us, myself and the other four boys, from Stevenson to Scottsboro. There were five of us together at Stevenson. Odell Gladwell did not remain on the train. Gleason did not remain on the train as far as I know. He didn't get to Stevenson. Gleason was one of the white boys in this fight. The last I saw of him he was on the train. The next place I saw Gleason was at Scottsboro, Alabama. When I got to Scottsboro, I saw Victoria Price on the outside. When I first saw her at Scottsboro she was sitting in an automobile in the jail house yard. I did not have any conversation with Victoria Price then; I kept away from her.

The following then occurred:

Q. Now, don't answer this question until the State has an opportunity to object—did you keep away from her by reason of some pre-arranged plan?

Mr. Knight: We object to that.
Court: I sustain the objection.
Mr. Leibowitz: We except.

Odell Gladwell, that is what he gave his name as in Scottsboro, one of the white boys, spoke to Victoria Price. I saw Victoria Price do something; she motioned for myself, I think, with her hand as she sat in the automobile. I noticed her. I did not go there to where she was. After that Odell Gladwell went over. They engaged in some conversation..

I was locked up in that jail, I didn't know what I was locked up for. I didn't know there was any charges against me then or not. No charges were ever preferred against me in that court. I was kept in that jail some eighteen days. I was kept in that jail during all four of the trials in Scottsboro,—I mean except the time they took me out to go to court. I was kept in the witness room.

The following then occurred:

Q. Who was the prosecutor? A. I don't know, sir.

Q. Did you see that gentleman over there (indicating Mr. Bailey)?

Court: That's not legal.

Mr. Leibowitz: Exception.

While in jail I saw Orville Gilley. I talked to him on many occasions. I had different talks with Gilley but not about these charges or these cases. I was finally released from this jail. Later, I saw Gilley in San Francisco. I talked to him there in San Francisco about this case; not about the facts in the case.

The following then occurred:

Q. About certain things that happened?

Mr. Knight: We object to that.

Court: Sustain the objection, that is too leading, I think.

Mr. Leibowitz: Exception.

I saw that boy Gleason in jail in Scottsboro. I talked to him.

The following then occurred:

Q. Did you hear what Victoria Price said to Odell Gladwell at the time Gladwell went over to the car, after she beckoned to you?

Mr. Knight: We object to that because not a part of the res gestae, and no predicate was laid.

Court: I don't recall any predicate.

Mr. Leibowitz: I think I can state positively that I asked Victoria Price if she didn't, in the court house yard at Scottsboro, motion to one of the boys and call him over to talk to her, and she said no, and I then asked her if she didn't tell that boy "You are to tell that you are my brother." I remember that positively.

Q. Did you hear what she said to the Gladwell boy while at the automobile? A. She asked him——

Court: Was the predicate laid as to this boy?

Mr. Knight: Our objection goes to the form of the question.

Witness: I am here to tell what happened.

Court: Never mind that. I sustain the objection.

Mr. Leibowitz: Exception. You are sustaining the objection as to what occurred between Gladwell and Victoria Price; is that because the predicate was not laid?

Court: No, because you don't follow it.

I saw Odell Gladwell, one of the white boys, go over to the car in which Victoria Price was sitting, and I heard Victoria Price say to Odell Gladwell, "One of you boys has got to play like you are my brother; if you don't we will be arrested for hoboing" and Gladwell answered that it was O. K. with him, "I will be your brother."

Cross Examination:

I came to Decatur yesterday. I came from Birmingham to Decatur, Alabama. I had been in Birmingham for some few hours.

The following then occurred:

Q. How many hours?

Mr. Leibowitz: We object to that; that is entirely immaterial.

Court: I overrule the objection.

Mr. Leibowitz: Exception.

A. It was all during the day yesterday. I think I got to Birmingham yesterday at 7:30. I come to Birmingham from New York City.

The following then occurred:

Q. When did you leave New York City?

Mr. Leibowitz: We object to that.

Court: Overruled.

Mr. Leibowitz: Exception.

A. I left New York City Sunday night.

Q. With whom did you come to Birmingham from New York City?

Mr. Leibowitz: We object to that as immaterial.

Court: Overruled.

Mr. Leibowitz: Exception.

I came with my wife. I am married now. No one else came with me besides my wife from New York City. I saw Ruby Bates when I was in New York

City. I haven't seen her in five or six months. I haven't seen her since I have been in Decatur, today or yesterday.

When we people got on the train at Chattanooga, we got out on a box car when we got out of the tunnel. I think Gilley, Victoria Price, Ruby Bates and I was on the back end of a box car.

I know the defendant, Haywood Patterson. I wouldn't want to say whether he was in that fight that day. I wouldn't say whether some of the white boys stepped on his hand back on an oil tank car that day; I wouldn't say whether some of these boys told me that they did step on some negro's hand. I wouldn't say for sure which one of the gondolas I got on. That was after we got to Stevenson that we changed cars to the gondola. The fight took place in the gondola car nearest the caboose, not nearest the engine. I wouldn't say for sure how many negroes were there in that fight, but there was some, maybe twelve or fifteen negroes. The fight started as soon as we left Stevenson; it must have been two or three miles out from Stevenson when I went over the car. I did not get into the car where the fight was. I got on the side of the car like; I was riding this car (indicating) and I got over the side of the car, that goes down this way (indicating) on this side. I didn't actually get into that car at all, but just one foot, I was here with the girls. I started to get in the fight to help those other white boys. I didn't get into the fight because the negroes had us outnumbered. I didn't see that we were outnumbered before I started over in there. There must have been six or eight negro boys in there when I started over. I know that I seen the rest of the negroes on three or four cars back further, and I climbed off shortly after that. I wouldn't say I could see all up and down. I seen some several negroes in cars back of this car, and I climbed off of this car. I wouldn't say for sure that this was the car that the fighting took place on. I was in one of the gondola

cars near the middle. Gilley was sometimes in this end of the car (indicating), and sometimes in the other end. I think that Gilley, when I left was back towards this end (indicating). You have to be careful in leaving a train like that, a fellow has got to take his time; sometimes it takes 20 minutes to cross to the other; you have to get off this end (indicating) to save your legs, you know. Naturally I looked where I stepped and was watching the negro boys also. I did not exactly get a pretty good view of the white boys and the negroes fighting. I had to watch my step, and I couldn't tell exactly which one was which.

The following then occurred:

Q. There was standing Victoria Price and Ruby Bates in the car which you left?

Mr. Leibowitz: We object to that.
Court: I overrule the objection.
Mr. Leibowitz: We except.

A. Yes, sir.

Gilley and I didn't talk about the fight any, about joining in the fight. I told them I would help them. Those negroes were not all over the car; they were all in bunches, and you couldn't tell how many were in a bunch. The fight was going on between the white boys and the negroes while I went and got off the train. After I got off the train, of course I don't know anything about what happened on the train. I don't know whether or not any one of these box cars on this train were empty or not. I testified on direct examination that either rocks or pieces of coal were thrown. I think they got some pieces of coal or stone off the ground along the road; after the train left out of the tunnel leaving Chattanooga it gets mighty slow, especially because this train is heavy; they would climb off one car and catch the next one back. Me and Orville sitting on the top

where we was riding could see these boys do that. I wouldn't say for sure from which car they did start from when they started to picking up these pieces of coal or stone, but some several cars back from where we were riding. I wouldn't say which car they left or which car they would catch, whether it was the first or third. I know they did catch back on other cars. I wouldn't estimate the speed of the train at that time; it was going along very slow; any loaded train would have to go slow there, because that is an up-hill grade there. I don't know that is the only place they picked up rocks or pieces of coal. I think they picked up some stones in Stevenson when we stopped there. They did not get off the train any time after leaving Stevenson for rocks or stones. The train left out of Stevenson very fast. I wouldn't identify the defendant, Haywood Patterson, as the first negro to come over into the car where the white boys were. These boys looked small and looked young. I wouldn't say whether he was or not. I wouldn't want to identify any of the defendants; I don't want to say anything that I don't know for sure. I wouldn't say how many came; there was around twelve or fifteen. There was five white boys in the back end of the car they was in, Orville Gilley and myself still remained in the car with Victoria Price and Ruby Bates. They was fighting all over the train from the time they started throwing stones, and at different times before the train got to Stevenson, Alabama. If the fight got into the car which I was in, it happened after I got off and not while I was in there. I was in jail in Huntsville. No, I wouldn't say I was in jail for stealing; I think it was vagrancy and hoboing. I didn't hear any one of these negroes that were engaged in the fighting with the white boys, say: "Unload you white sons of bitches." I did not see a pistol. In that fight, I did not see any of the boys have a piece of iron. I wouldn't say for sure the whereabouts of the girls when the fight started; somewhere in one of these gondolas near the

middle here (indicating). These girls were riding in one of these gondolas (indicating); one of these middle gondola cars. They were in either one of these cars (indicating) or this fourth car; we first got up here in the end this way (indicating); we first sat there in that end and this fellow Orville Gilley was singing, and directly the girls got up and come back here (indicating). There wasn't anyone throwed off the train that I seen. Well, there was some of these boys on the ground when the rest of the train pulled by. Some of the negroes were close by at the time they got off. I got on this end here to get off (indicating left side of the car). Some of these boys got off on this side of the train (indicating right side). While that was going on the negroes were close by. These girls were somewhere in that car (indicating). I guess there was probably 36 to 40 feet from the place where I saw the white men get off and where the girls were; the length of a gondola car. I would estimate it 36 to 40 feet from one another. Didn't I say that these negro boys, when I saw them, seen them on that train, were near the center of the car. These boys, four of them left the train. I wouldn't say I saw any negroes in this end of the car when the fight was in progress. I wouldn't say most of the negroes were exactly in the end. I saw one, two or three negroes in that car in the center of the car. Looking over the top of these cars, your head is about level with the top and you can hardly tell exactly where the end of the car is, that is why I don't want to say for sure. I crossed from one gondola on to the end of the other gondola and climbed off. That was the car in which the fight was going on. I didn't cross over into this car; I crossed to the end. Well, I wouldn't estimate whether the fight was going on in the car to which I crossed over, or anything like that. To my mind it was going on, because these fellows begun to mix up together, and I estimated that there was a fight there, from what the white boys told me. I had

even estimated that there was going to be a fight for some little time before that. If these white boys backed up what they said, I know there was going to be a fight. I got off that car because I didn't want to be in this fight. I left the car the girls were in because on some of these cars the stirrups are higher than the others, and on som of them they are lower stirrups from which you can get off on the ground much better, and anybody will tell you it is safer to get on this end (indicating) and to get off at this end (indicating). I could have walked up to this end of the car and gotten off, without getting over onto the car in which the fight was going on. I didn't do that because, as I just told you the stirrup on this car was lower than the other.

The following then occurred:

Q. I will ask you if you testified in the case of the State of Alabama against Haywood Patterson in Decatur last Spring? A. Yes, sir.

Q. I will ask you whether or not you were asked on that trial—you will better understand it if I read two or three questions before this: "Then what happened—was there anybody else along in those gondola cars? A. Yes, sir. Q. Who was in those other gondola cars? A. Some white boys. Q. What car was that, to the rear or front? A. To the rear of the car we were in. Q. How many white boys? A. Five." Now then, didn't I ask you this question: "What happened after that?"

Court: Do you remember that.

A. No, sir, I don't remember.

Q. I will ask you if you didn't answer that question this way: "Two white boys came back and said they tramped on the negro boys and made them mad and they were going to have a fight and told us to help shove them off." Did you make that answer? A. Yes, sir. I said at this time they had got mad.

Q. Then, were you asked this question: "Did the negroes finally come over?" and did you answer: "Yes, sir", and then this question: "And have a fight" and did you answer: "Yes, sir"? A. Read that over again, please.

(Questions and answers are re-read to witness.)
Court: Do you remember that?

A. They were fighting, yes, sir.

Court: That is not the question, not what you say now the question is whether or not you remember those questions were asked you, and you made those answers on the other trial?

Witness: I wouldn't say that it was.

Q. I will ask you if this question was asked you—"Tell us what you saw?" Do you remember that that question was asked you? A. No, sir, Mr. Knight, I wouldn't say for sure.

Q. Now, I will ask you if you didn't answer as follows: "I seen them fighting among themselves and I started to get in the fight myself; there was a negro made a motion to hit me, and I was on the side of the train where I had a chance to get off, and I climbed down where the couplings are, and got off." A. I did, and I said that this time when the question was asked me.

I saw some white boys at Stevenson, I think there were four. I noticed where one of the boys was scratched, Odell Gladwell. I seen just a little blood, and a bruised place. I didn't see any bloody clothing. I wouldn't say for sure what store I went in up there in Stevenson. I remember this; I remember I went in the depot to get a drink of water because I was thirsty from walking. I don't remember if I went in any store while there. We went by automobile from Stevenson to Scotts-

boro. I don't know the people's names, it must have been some of the citizens who took me. I would estimate that the negroes that were fighting in the car next to the car in which the girls were in, were 36 to 40 feet from the girls.

The following then occurred:

Q. What do you do in New York?

Mr. Leibowitz: We object to that as immaterial, what difference does it make what he was doing at any place.

Court: I'll overrule the objection.

Mr. Leibowitz: We except.

I am working in New York. The guy I work for the people call him "Nick". I call him "Nick"; he has got some funny name—I don't know what it is. I work as counter man at a restaurant. None of the defendant's counsel met me in Birmingham yesterday. I did not come to Decatur with any of defendant's counsel, not lawyers, or any person working for them. I came with my wife, and the fellow that drove the car.

The following then occurred:

Q. What was the fellow's name that drove you up here?

Mr. Leibowitz: We object to that. I am sincere, I don't see what all that has to do with the case.

Court: Overruled.

Mr. Leibowitz: Exception.

I don't know; I called him Bob. I had not known him for some time. I don't know his last name.

Re-direct Examination:

When I got into this car with these two girls and Orville, we went up and sat down in the car, at Stevenson. After I sat down with the girls, I blew the mouth organ, and I think the other fellow was singing, and the girls. He was reciting poetry during the night.

The following then occurred:

Q. Where?

Mr. Knight: We object to that.
Court: Objection is sustained.
Mr. Leibowitz: Exception.

After I sat down, as I testified, in the car with these three persons, I did not move from that place until afterwards. After I sat down at the end of the car nearest the engine. I walked towards the back end of the car. Orville Gilley walked with me. We two went to the other end of the car. The two girls afterwards came down to that end of the car. I was blowing the harp and Gilley and these girls were singing. After the two girls left that end of the car and went towards the end of the car where Gilley and I were we were all sitting down. When I am standing up in one car, I cannot see over into the next car and see anybody sitting in that other car. That is impossible. If I were standing in the car where the fighting was taking place, I could not see anybody sitting in the gondola in which I was riding. Victoria Price had a snuff box while I was in her company. I did not see her use the snuff box. I seen her use snuff. The car I was talking about somebody standing up in and not being able to see somebody sitting down in the other, was loaded. I do not know how near the top it came up. I do not know how high that chat was in that car. I wouldn't say for sure; it was about two or three feet from the top. I cannot see a person

if they sit down without raising up. They was lying down like. When I and these women were in that car, riding along there, before the fight took place we were lying down like, leaning on our elbows, until I heard them boys call, and then I got up. Before the fight, I, these two women and Orville Gilley were sprawled there in different positions on top of the chat, riding along there in as comfortable a position as we could have.

The following then occurred:

Q. I want to ask you this, you said that chert was two or three feet from the top, if a person were in the position of these two girls, and this fellow Gilley, were lying there in the chert, could anybody in the next car see their forms lying there on that chert, or reclining of that chert, if standing on their feet?

Mr. Knight: We object to that.
Court: I sustain the objection.
Mr. Leibowitz: Exception.
(Witness answered anyway.)

A. Not if standing up on the bottom of the car.

Re-cross examination:

I got on the side of the car in which the fight was going on. I could see into that car after I got up on the side. My head was about even with the top before I got down on the stirrup. After I stood up I could see over in the furtherest end, but I wouldn't say I could see in the end nearest to me. I seen some negro boys. I wouldn't say what that car was loaded with. I think it was loaded with coal. I wouldn't say for sure what it was loaded with. The car in which the fighting was taking place, I would not say for sure how near the top it was loaded. The car I was in was loaded within two or three feet of the top. I can't

tell how high this other car was loaded. We were reclining on our elbows, making ourselves as comfortable as possible, the four of us. I just got through telling you that when the boys called for us, we got up and I could see some of the negroes and the white boys faces. They were standing up fighting.

Re-direct Examination:

The following then occurred:

Q. At the railroad yards, where you left Chattanooga, when you got on the train, I want to ask you if you saw Dallas Ramsey? A. Not at the railroad yards, but over in the jungles——

Mr. Knight: We object to that, and move to exclude it.

Court: The objection is well taken; sustained.

I saw him near the place where I took the train. I saw E. L. Lewis about the same time. They are two colored men. Dallas Ramsey is here now, I have seen him.

The following then occurred:

Q. Was Victoria Price with you at the time you saw these men?

Mr. Knight: That is objected to.

Court: I sustain the objection. I don't see the materiality of it.

Mr. Chamlee: We except.

DALLAS RAMSEY, sworn for the defendants, testified:

Direct Examination:

I am Dallas Ramsey. I live in Chattanooga. I have seen this boy Carter, before today. I remember in March 1931, when this trouble is said to have occurred on the freight train between Stevenson and Scottsboro. On the morning of that same day, before that happened that afternoon, I saw Lester Carter off at a distance. I didn't see him to know him, also the girls. I saw Victoria Price, at that time I lived about 300 yards from where the Central of Georgia crosses the Southern Railroad in Chattanooga. I knew E. L. Lewis. He is dead now. I saw his dead body. He and I were together that morning. He lived there close to me. (He is shown a photograph.) This is a picture of the railroad crossing, with the picture of the house, where E. L. Lewis lived at the time this trouble occurred. I live there close to that place.

The following then occurred:

Q. I want to show you another picture—we offer this picture.

Mr. Knight: Until something else is shown I want to interpose an objection to the introduction of the picture. I can't see the relevancy of it.

Court: I sustain the objection.

Mr. Chamlee: This is explanation of this man's testimony.

(Carter is brought in for identification by the witness.) I cannot say whether or not that is the man that I saw with the two girls at Chattanooga on that day. He seems to be the size. I wasn't right close to him. I can't identify him.

The following then occurred:

Q. Did either one of these girls talk to you in Chattanooga, before the train left Chattanooga?

Mr. Knight: We object to that.
Court: I sustain the objection.
Mr. Chamlee: We reserve an exception.

Q. State whether or not Victoria Price asked you what time the train would leave Chattanooga for Huntsville on that morning? A. Yes, sir, she did.

Q. What did you say about the time the train left? A. Yes, sir, I told her that about nine o'clock she could get a freight train out of Chattanooga.

Q. Had you seen her before the time she asked you about the train?

Mr. Knight: We object to that.
Court: I sustain the objection.
Mr. Chamlee: We except.

Q. State whether or not the freight train stopped at or near this point of crossing with the Central of Georgia Railroad? A. Yes, sir.

Q. State whether or not many people who ride freight trains get on at that point? A. Yes, sir, the freight train stops there going in and coming out, and they go there to board it.

Q. State whether or not near this place there is woodlands?

Mr. Knight: We object to that.
Court: I sustain the objection.
Mr. Chamlee: We except.

E. L. Lewis was with me on that occasion, he saw these girls and this boy. He was present when she was talking to me.

W. A. SULLIVAN, sworn for defendant, testified:

Direct examination:

My full name is William Alexander Sullivan. My business is a photographer. My residence is Decatur, on Seventh Avenue, East. I have lived in Decatur seventeen years. At your request, last Spring, I went to a barn of a man by the name of Luther Morris located this side of Stevenson, on the Southern, near the Southern Railroad. I went with Mr. Schwartzbart. It was a cloudy day with some little rain during the afternoon, but it was clear enough for me to see in all directions. When we got to the barn, things were clear enough so that we could see around the site. When I wear glasses I have no trouble in seeing. I can see distances like any other normal man. You gave me instructions of just what I was to make. We got up into that barn. There is a hall through that barn. I spoke to some lady, Mrs. Morris, when we went up there, and got permission to go in there. Mr. Schwartzbart went up into the loft with me. I took a regular professional camera with me. I had with me photographic supplies in the form of plates. There happened to be along that railroad there at that time, by accident, some freight cars similar to the cars shown on this miniature train of cars, called gondola cars. Some of these cars show on the photograph I later took. The cars just happened to be there. We set up on the floor of the loft of the barn and looked out that opening. When I set up on the floor of the loft up against that opening there was a 2 x 4 across the opening that strikes you somewhere about chest high. I looked right at it. I saw these gondola cars on that railroad. As I looked there the top of the gondolas, the top side of it, was higher than the level I was on. It was higher than the level of the eye. I took a picture that demonstrates

that clearly. (Pictures handed to witness, Exhibit No. 6 for Identification.) This is a true picture representation. We set the camera up nearly level with my eye, and this picture is the result. That camera was on a tripod, on a height of that tripod just about where my eye was just as nearly as I could place it. The purpose was to show in the photographic form what my eyes could see and that is the true result. That demonstrates what we could see out of the window looking toward that track. I know what kind of car that is in the picture, that is what they call a gondola car.

The following then occurred:

Mr. Leibowitz: May I offer this picture in evidence. It is marked for identification, No. 6. No objection.

Picture is handed to jury for inspection.

The black mark on the bottom of this picture is the 2x4 cross piece.

(Witness is shown photograph, marked No. 7 for Identification.) This is a correct view showing the embankment of the railroad, and a piece of the gondola car shown on the right hand side of the picture. This photograph was made with the camera sitting on the floor on the left. And that is the view I got.

The following then occurred:

Q. Suppose a man was working on the floor nailing down boards or something, and looked out through the opening, itsn't that a fair representation of the view you would get through that opening?

Mr. Knight: We object to that.

Court: Sustain the objection.

Mr. Leibowitz: Exception.

I do not know whether or not that gondola that appears on that picture, part of one there, was the same height gondola as the one that went by there on the day of this trouble. I don't know anything about the ones that went by there on that day. I know nothing about that. In making this picture I set the camera down on the floor of the loft. I suppose the lens were about six or eight inches above the floor of the loft; that is the actual view you get from that. When I set it on the floor the lens was up six to eight inches above the floor when the camera was sitting on the floor.

(Picture identified as No. 7 offered in evidence without objection.)

I took Defendant's Exhibit "A" in evidence. This was made above the house and barn looking this way, showing the cars on the track and the barn, and showing the relation of one to the other. My tripod was on the ground, and the camera on top. I suppose the lens of the camera was about this high (indicating)—about four and a half feet. The object in taking this picture was to show the relation of these cars and the barn. This is the result of the operation of that camera. That is a fair representation of what your eye could see if your eye were in the same position as the lens of the camera.

The following then occurred:

Q. Does that show, and did you personally see whether or not the tops of those gondolas wasn't higher even than the roof of that barn?

Mr. Knight: We object to that.
The Court: I sustain the objection.
Mr. Leibowitz: Exception.

Q. What did your examination disclose with refer-

ence to the height of the gondola and the roof of that barn?

Mr. Knight: We object to that because it has not been shown that the gondolas are the same kind of gondolas that were on the track that day, or that there were any gondolas on this track at the time Mr. Morris looked from the loft of his barn; it has not been shown that the barn is in exactly the same condition that it was on that day; it has not been shown that the witness had an opportunity of observing the track under the same conditions that Mr. Morris looked along the track and testified as to what he saw on that occasion.

Court: I sustain the objection.

Mr. Leibowitz: We except.

It would be hard to answer just how deep the depression is from the track down to this place where this barn is located, unless I had measured it and knew more about it than I do. I do not know what is the difference of the elevation of the ground where the barn is situated and where that car stands. The ground between the barn and the base of that fill is about level; it slopes slightly to the track. I don't know how high it is up to the top of that fill. But the house is,—the barn sits lower than the railroad track. I should say it was in the neighborhood of eighteen feet lower than the railroad track the best I can judge from this photograph and from what I saw at the time. The photograph refreshes my recollection about that. That is the only way I have of refreshing my memory. My recollection is refreshed. Testifying from my recollection as refreshed I would say that the depression is about eighteen feet. The floor of the loft is about eight feet from the ground. I am five feet, eight and a half inches tall. If my eyes are approximately four feet and four or four and a half inches from the ground,

you are right in saying that, added to the eight feet, would be thirteen feet, about. I could not see over the top of the gondola car with my eyes thirteen or fourteen feet from the ground, where the barn stood.

Cross examination:

I made this picture during the last trial in Decatur. These pictures were made on the 30th day of March, of this year. I did see some box cars and some gondola cars on the track there at that time. I know nothing with reference to the condition of the track as to having cars on it, on the occasion in question.

The following then occurred:

Q. I will ask you about this picture, I believe it is the picture shown to be Exhibit "6", does that black mark there represent that 2x4? A. Yes, sir.

Q. How close were you to that when you took that picture? A. That lens was from 12 to 15 inches away from it.

Q. The lens was? A. Yes, sir, the lens was.

Q. Where the lens was, was that a little above, or completely above and over that 2x4 when you took it? A. Yes, sir.

Q. How do you account for the fact that the 2x4 is shown? A. Because of the angle of the lens.

Q. Is that true, sir, was the lens angling down? A. The view of the lens comes down here; the lens I was using on this has an angle of about 70 degrees for work.

Q. This picture represents looking out of the barn towards Paint Rock? A. Yes, sir.

Q. Did you take any picture of the barn at the back end of it——

Court: This No. 6, was that one of the pictures that was admitted?

Mr. Knight: Yes, sir.

Q. You were looking in that direction, that is towards Paint Rock when that picture was taken? A. Yes, sir.

Q. On which side of the barn were you standing at the time you took this picture (handing picture to witness)? A. Well, here is the opening here.

Q. (By the Court) That is the one that shows one gondola? A. Yes, sir.

Q. (By the Court) Was that at the center of the opening (this Exhibit 6)? A. We were near the center of the opening, but more to the right.

Q. How do you account for the fact, you have a photograph here, have you not, of a portion of the left side of the barn, how do you account for that? A. I think it would do that; I think the lens being closer, the angle we spoke of would catch that.

Q. Then you have it there, standing over on the other side? A. Yes, sir, because the further away you get from it, the smaller it will show.

Q. What distance, in your best judgment, does that represent, the line of vision between that gondola there, I mean that portion of the gondola back to here (indicating)? A. What distance? I would say something in the neighborhood of 150 feet.

Q. Did you make any pictures looking directly out of that barn? A. You mean looking straight west?

Q. Directly away? A. It seems to me that we did.

Q. It is not in any of these here? A. No, sir.

Q. This picture made up in the loft,—in your best judgment what distance does that represent? A. That represents a little more distaonce than the other.

Q. Tell us what that is? A. That is east, the camera was sitting facing west, or rather the northwest, more northwest than the other.

Q. This picturre was across the railroad track? A. Yes, sir.

Q. And this was directly down the railroad track? A. Yes, sir.

Q. What was the purpose of going across that way,

on Exhibit 6, what was the purpose of showing that view in there? A. That was done in order to bring that car in line of vision.

Q. It was your purpose to bring these cars in line as your eye would see it? A. Yes, sir.

Q. From this picture here, even this picture taken on the floor, you could see people in the gondola car, provided any portion of their body was above the top? A. Yes, sir, you could.

Q. The same way with this? A. Yes, sir, absolutely, if above the top.

Court: I would like to ask the witness one or two questions.

Q. In taking a photograph, does the appearance of the photograph when taken, as to its levels, elevations or depressions on the ground, depend upon the manner in which the lens is adjusted? A. It depends on what we call the focal length of the lens, and the manner in which it is adjusted. In other words you can cause distortion by using extreme focal length. This particular lens happens to be a twelve-inch lens, which is considered a commercial lens for the work.

Q. Would the position in which you place the lens with reference to angles make any difference? A. You can make it make a difference, yes, sir.

Q. For instance, here is two objects that are about even, can you so adjust the lens in taking a picture of them so that you will make them uneven? A. You can do that, yes, sir.

Q. Can you do the same thing with reference to elevations? Yes, sir, it can be done.

Q. In all of it, the distance would have something to do with it? A. Yes, sir.

Re-direct Examination:

Q. I want to ask you, Mr. Sulliven if you have had

any connection with anybody in this case, the lawyers for the defendant, or anybody on the side of the defense, outside of being asked to go out there and make these photographs?

Mr. Knight: We are not insinuating that he is.
Court: Then, that is immaterial.

Q. Did you, when you went out there, do anything of what is called trick photography?

Mr. Knight: I don't believe Mr. Sullivan would do that.
Court: Do you object?
Mr. Knight: Yes, sir.
Court: Sustain the objection.

Q. What I want to know is this, when this picture (Exhibit No. 6) was taken was it your object to turn your camera so that you could get any portion of this gondola car, so as to be able to show in court what you could see out of that window, looking straight at the gondola car? A. That was the purpose.

Q. Would that be the most favorable view any person could get of it?

Mr. Knight: We object to that.
Court: Sustain the objection.
Mr. Leibowitz: We except.

Q. What would be the closest point on that track of any car on that track shown on that picture, what object on that track would be the closest? A. As far as you could see here, of this gondola.

Q. Would if be the gondola that would be the nearest to you? A. Yes, sir.

Q. Then, if you turn your eyes towards the left and looked down the track, you would see further? A. Yes, sir.

Q. Further away than this gondola? A. Yes, sir.

Q. If a man stood in this opening where you stood, and looked out at the point nearest to him on that railroad track, would see this gondola, if it was there? A. Yes, sir.

Q. I want to know if Exhibit No. 8 absolutely and faithfully and honestly represents the height of the gondola car and the height of that train? A. As nearly as I could make it, yes, sir.

Q. Was that the very purpose of taking that picture? A. Yes, sir, that was the purpose of that picture.

Re-cross Examination by Mr. Knight:

Q. When a man looks from the position you were in when taking this picture (Exhibit 6) from the side of the barn, the nearest thing that comes in view would be the gondola cars, but he is looking across the track, directly, so to speak, at the gondola? A. Well, yes, sir, that is right, but not directly.

Q. But if the gondola car is nearest that vision, he is looking directly to that extent—that is when he is looking across here, he sees the gondola? A. Yes, sir.

Court: What number is that?
Witness: Number 7.

Re-direct examination:

Assuming we are standing here (having made a square on a piece of paper), I can see that from where I sit. When I look squarely out of that window, looking almost straight ahead, I do not get the result shown on Defendant's Exhibit No. 6; that is looking more to the north. I looked down the track, and turned my camera that way so as to get all of the view I could through that opening. The result of that was this picture, defendant's Exhibit No. 7. That, of course, didn't change the height of my

view. It wouldn't make any difference whether I was looking straight, or whether on down the line, that wouldn't change the height.

The following then occurred:

Q. And would not give any more opportunity to see in that car as it went on down the line?

Mr. Knight: We object to that.
Court: Sustain the objection.
Mr. Leibowitz: Exception.

ELIAS M. SCHWARTZBART, sworn for the defendant, testified:

Direct examination:

I am an attorney and of counsel. I am assisting here with the defense of this case. I remember going down to the barn of Mr. Morris together with Mr. Sullivan of Decatur. I went under definite instructions from you to see what I could see out of that big opening in that barn.

I went up in the hay loft, Mr. Sullivan and myself. We saw Mrs. Morris and she said we could go up there. We got up in the hay loft on the ladder at the side of the barn, and there was an opening facing the west, looking towards Paint Rock. We went to the opening. The opening was perhaps eight feet high, and a cross bar, a two or three by four, about five feet high or thereabouts. I looked from that opening in various directions. I first looked to the extreme right, trying to get the best view possible that a person could get of a passing train from the east towards the west. I noticed some gondola cars standing there, beyond the barn. They just happened to be there. While standing looking through this opening, I looked directly at the gondola cars, and in my judgment the top of the gondola cars were higher than my eye

level. I couldn't see beyond the top of the gondolas, or any of the interior portion. My eye level was quite definitely lower than the top side of the gondola. (Witness is shown a photo.) This is a correct representation of the view that I got. I saw Mr. Sullivan take that picture. I was beside him; I assisted him. The lens was practically the same height as the eye. That is a true picture of what I could see looking straight out that window northwest. I was present when this picture was taken, Defendants' Exhibit No. 8. These gondola cars are very close, practically parallel with the barn, so that when looking out of that barn straight across, the first thing I saw was the gondolas. According to that picture, and refreshing my recollection from the picture, I would say, looking from that direction, the top of the gondola cars was at least as high as the peak of the roof.

It having been made known to the court that E. L. Lewis, a witness on behalf of defendant at the previous trial, had since died, his testimony at said previous trial was read into the record as follows:

E. L. LEWIS, sworn for the defendant, testified:

(Read to the jury, this court ruling on objections to testimony.)

My name is E. L. Lewis. I live at Chattanooga, Tennessee since 1922.

The following then occurred:

Q. I want to show you a picture of a building and will ask you if you recognize the house in that picture?

Mr. Knight: The state objects.
Court: Read that question again.

Q. I want to show you a picture of a building and will ask you if you recognize the house in that picture?

Mr. Chamlee: The picture was Exhibit 11 to testimony of Dallas Ramsey.

Court: I sustain the objection.

Mr. Chamlee: Exception.

Q. Is that your house?

Mr. Knight: State objects.

Court: Sustained.

Mr. Chamlee: Exception.

I know Dallas Ramsey. I live three or four hundred yards from him. The picture introduced in evidence as an exhibit to the testimony of Dallas Ramsey, Exhibit No. 12, gives a good representation of the railroad crossing there, the junction of the two railroads. In that picture there is a picture of a water tank for the Southern Railroad.

The following then occurred:

Q. I want to show you another picture, marked Exhibit No. 10, to the testimony of Dallas Ramsey, and will ask if you have ever seen that woodland pictured in this picture.

Mr. Knight: State objects.

Court: Sustain the objection.

Mr. Chamlee: Exception.

Q. I will ask you whether or not you have had occasion to be in this woodland shown in this picture, to be in there sometimes? A. Yes, sir.

Q. Trees in there? A. Yes sir.

Mr. Knight: There was objection to that, it is so immaterial.

Court: Sustain the objection.
Mr. Chamlee: Exception.

Q. Did you have charge of part of it?

Mr. Knight: That is objected to.
Court: Sustain the objection.
Mr. Chamlee: Exception.

Q. Is that your house?

Mr. Knight: We object to that.
Court: I sustain the objection.
Mr. Chamlee: We except.

Q. Do you own any hogs?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Where do you keep your hogs?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. In some of these woods shown here?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. On the morning of the 25th of March, 1931, did you have any engagement with Dallas Ramsey?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. What was that about?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: We except.

Q. State whether or not he came to your house early on that morning and you and him went in this woodland to look at some pigs?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Did you and Ramsey go down to see the pigs?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Did you have a sick hog somewhere on this land?

Mr. Knight: We object.
Court: Sustained.
Mr. Chamlee: We except.

Q. Did you go to see about a sick hog?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: We except.

Q. On your way, either going or coming back, I will ask you to tell us whether you saw any women?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. How many?

Mr. Knight: We object to that.

Court: Sustained.
Mr. Chamlee: We except.

Q. Was there any fire anywhere around there?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. On the night before this trip when you went to see about the hogs, did you see a fire burning in this woodland, did you see a fire there the night before?

Mr. Knight: We object.
Court: Sustained.
Mr. Chamlee: Exception.

Q. After you had been down to see the hogs, did you have an occasion, or did your friend Ramsey have occasion to talk to some women?

Mr. Knight: We object to that.
Court; Sustained.
Mr. Chamlee: Exception.

Q. It was nearer back to your house?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. By coming by where the women were than it was going by the way you had gone?

Mr. Knight: We object.
Court: Sustained.
Mr. Chamlee: Exception.

Q. This stream here, are there crooks in the stream that wind around through the land?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. I will ask you if you can give a description of how the woman looked?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. A scar or a bruise?

Mr. Knight: State objects.
Court: Sustained.
Mr. Chamlee: Exception.

Q. (By the court) She had what?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. What size woman was she?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. How old would you say she was? A. She was something like, looked like in her twenties.

Q. Do you remember how she was dressed? A. She was dressed in overalls and a long coat on, but her overalls of course was a little bit dirty. (Rest of answer was excluded by the court on motion, to which defendant excepted.)

Q. Had you seen that woman before that time?

Mr. Knight: We object to that.

Court: Sustained.
Mr. Chamlee: Exception.

Q. Where had you seen her before that?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Colored men?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. How long was that before you saw her on this occasion?

Mr. Knight: We object.
Court: Sustained.
Mr. Chamlee: Exception.

Q. You mean back in the woods?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Had she ever come up to your house?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: We except.

Q. Asked for food before this time?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Court: Let her come in.

Mr. Knight: I would like to ask him the color of her hair; can I question him a little?

Court: All right.

(Cross examination by Mr. Knight.)

I said that I had seen this woman about three or four months before that time. I am sure that is the same woman. I saw her about March 24th, I think it was, 1931. She had kinda dark hair.

(Mr. Knight then asked that Victoria Price be brought in.)

Re-direct Examination:

She had on a cap. That is the woman (indicating).

The following then occurred:

Q. How many times would you say you have seen this woman in those jungles, or come to your house?

Mr. Knight: We object.

Court: Sustained.

Mr. Chamlee: We except.

Q. Frequent visitor to that place?

Mr. Knight: We object.

Court: Sustained.

Mr. Chamlee: Exception.

Q. When you were returning from looking at this sick hog, did she say anything to Ramsey in your presence, ask him something?

Mr. Knight: We object to that.

Court: Sustained.

Mr. Chamlee: Exception.

Q. Did he tell her?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Did she say anything else to him?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

She said she wanted to go back to Huntsville on a freight train. The freight trains stopped at that water tank every day and every night to get water.

The following then occurred:

Q. Are there a few or a great many people get off there and go in those jungles?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: We except.

Q. Is the edge of these jungles near the railroad or along the side?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. I will ask you to tell us if after you had returned from looking about the hogs if some white man stopped you in the road?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Before that happened, before this white man spoke

to you had you seen these girls after you left the place where they were in the jungles?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Where were they?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. This girl here was sitting on a long log between two colored boys? (This question was not read out before the jury, but was submitted to the judge, who, after reading it, sustained an objection to the question, lodged by the state, and handed the question to the reporter to copy in the record of this case. Whereupon, Mr. Chamlee, for defendant, fully excepted to the Court's ruling.)

Q. When this white man came back what became of those colored men and this girl?

Mr. Knight: We object to that.
Court: I sustain the objection.
Mr. Chamlee: We except.

Q. Did she leave these colored men?

Mr. Knight: We object.
Court: Sustained.
Mr. Chamlee: Exception.

Q. When she got with the white man did the white man come to see you about something?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Did you tell him that you had not said anything improper to the girls?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Did Ramsey say anything improper to the girls?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Did he talk to them about riding trains?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. What did she say about her husband?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Did she say anything about they were broke?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Did you hear Ramsey mention anything about getting a job at the Champion Mill?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Is the Champion Mill located on Main Street?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. In Chattanooga?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

It was I guess about two hours from that time until the freight train actually came. I seen these women going across the Central of Georgia trestle going back towards the tank where they get on the train.

The following then occurred:

Q. Tell us whether or not next day you heard about this trouble down at Scottsboro? A. Yes, sir, the next day I was looking at the morning paper and I seen where this trouble happened at Scottsboro. (The Court ruled out the balance of the answer to the question. No exception was taken; p. 644, 1st question.)

(Next two questions were not read or offered.)

Q. Since that time you and Ramsey and everybody else has talked about this case?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. All the time more or less?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Is it not true that a lot of other people in that same neighborhood have also talked about it?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Do you know whether other people have seen this woman in the jungles?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. State whether or not she came to your house and asked your wife for food?

Mr. Knight: That is objected to.
Court: Sustained
Mr. Chamlee: Exception.

Q. Was there another girl there besides the one you saw here?

Mr. Knight: That is objected to.
Court: Sustain the objection.
Mr. Chamlee: Exception.

Cross Examination:

I saw Victoria Price on the 24th day of March. There was a little, small girl with her who was a little taller than Victoria. I didn't notice the color of her hair right particular. The two were together, Victoria Price and the other named Bates. I seen the names in the paper since then.

The following then occurred:

Mr. Knight: We object to the next question and answer; I think it is incompetent and immaterial.

Court: (After reading question.) Sustain the objection.

Mr. Chamlee: We except.

(The question was as follows.)

Q. You just know those were the two girls?

She has got kinda dark hair; I wouldn't say right black. I didn't notice the other one's hair, she was sitting down.

The following then occurred.

Q. You say you saw a man on the railroad tracks, you say he asked you what you had said to the girls?

Mr. Knight: I object to that answer. I don't think if is material.

Court: I sustain the objection.

Mr. Chamlee: We except.

Q. And asked you what you said to them?

Mr. Knight: I object to that also

Court. I sustain the objection.

Mr. Chamlee: Exception.

[The answers to the above two questions, which appeared in the original record are not in this record.]

Q. Tell us what that man looked like? A. He was a young man like, along in his twenties, looked to be.

Q. Was he long or short? A. He was just a little bit taller than I am.

Q. The man you saw was a little taller than you? A. Yes, sir.

Q. How many men did you see? A. That man was by himself.

Q. What was the color of his hair? A. Kinda red looking hair.

Q. You said that he was taller than you? A. He looked to be just estimating.

Q. How was he dressed? A. Overalls.

Q. Was he heavy set? A. Not quite as heavy through here (indicating) as I am, but a little bit taller than I am.

Q. You told him you hadn't said anything to them? A. Yes, sir.

Mr. Knight: I want to make my objection to the answers to these questions. I necessarily had to ask these questions on the former trial. Now, I am objecting to these answers. Of course I would not have propounded these questions under the present court's ruling.

Court: The objection is sustained.

Mr. Chamlee: We except.

Q. You are sure he said something to you about that?

Mr. Knight: We object.

Court: Sustained.

Mr. Chamlee: Exception.

Q. You are sure of that? A. Yes, sir.

Q. That was down about the sick hog pen?

Mr. Knight: That is objected to.

Court: Sustained.

Mr. Chamlee: Exception.

Q. How far from the pen in which you had the sick hog?

Mr. Knight: That is objected to.

Court: Sustained.

Mr. Chamlee: Exception.

I saw the girls again that day, as they went down

the railroad. They went down after we passed them, after they passed us they went down the railroad and I didn't see them any more. Dallas went to his home and I went to mine. I don't know what time they got on the train that day. The train generally runs about nine o'clock. I saw them about nearly seven o'clock. I don't know if it was after seven; I didn't have no watch to look at.

The following then occurred:

Q. You say they told you they were looking for work?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. She had been to your house before?

Mr. Knight: We objected to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Did you see her?

Mr. Knight: That is objected to.
Court: Sustained.

Q. What was she looking for then?"

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Did she tell you anything about work?

Mr. Knight: We object to that.
Court: Sustain the objection.
Mr. Chamlee: We except.
(Lester Carter is brought in and witness iden-

tifies him as man he saw. Witness stood up beside Lester Carter, and was about the same size man.)

The following then occurred:

Q. What was it that he said to you?

Mr. Knight: I am objecting to the answer.
Court: I sustain the objection.
Mr. Chamlee: Exception.

Q How close was he to you when he said, hey?

Mr. Knight: We are objecting to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. That was your explanation to Carter, to the man that walked out here?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Have you seen Carter since that day?

Mr. Knight: That is objected to.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Did anybody tell you what kind of hair he had?

Mr. Knight: That is objected to.

Q. You looked to see what kind he had? A. Yes, sir.
Q. Didn't you look to see what kind of hair Victoria Price had? A. He was mad, he was mad and had his hat setting back.

(The next five questions were skipped.)

Q. Did you see Ruby Bates? A. Yes, sir.

Q. How do you know Ruby Bates? A. I know her when I see her.

Q. Had you seen her before?

Mr. Knight: We object to that.
Court: Sustained.
Mr. Chamlee: Exception.

Q. Yes?

Mr. Knight: That is objected to.
Court: Sustain the objection.
Mr. Chamlee: Exception.
(Next three questions were same as above and objection was sustained to them, with exception on part of the defendant. First three questions on page 653.)

Q. Where had you seen her?

Mr. Knight: That is objected to.
Court: Sustain the objection.
Mr. Chamlee: Exception.

Q. How many times have you seen Ruby Bates?

Mr. Knight: That is objected to.
Court: Sustain the objection.
Mr. Chamlee: Exception.

The following then occurred:

Mr. Leibowitz: Now, your Honor, I want to read into the record certain testimony for which I have laid a predicate, certain testimony that has been identified as the official testimony, of Victoria Price, on page 66 of the record made before Judge Horton last Spring. Turn to that, General, you will probably have to help me.

Mr. Knight: Now, your Honor, of course in order to impeach a witness he has got to introduce testimony of a former trial on the points on which he has laid the predicate. But it should be confined to that, however.

Court: That is what I have ruled, of course.

Mr. Leibowitz: That is what I expect to do. This is on page 66 of that record:

"Q. Did that blood come out on your clothes? A. Yes, sir.

Q. Did the doctor see that, did you show it to the doctor? A. I reckon he did."

Mr. Leibowitz: Then on page 65, the preceding page:

"Q. Were you bleeding from your private parts? A. A little bit."

Mr. Leibowitz: Then on page 36 of the same record:

"Q. Was that the last or first thing, being struck on the head with the gun? A. No, sir, one of them picked me up by the legs and back of the overalls and held me over the gondola and said he was going to throw me over.

Q. Held you by your head and feet with your head hanging down? A. No, held me by the legs."

Mr. Leibowitz: Turning now to page 58:

"Q. So you were not having intercourse for about five minutes before the train reached Paint Rock? A. They quit raping me about five minutes before the train reached Paint Rock."

Mr. Leibowitz: Then again, on the same page:

"Q. Didn't none of them try to come back for a second time? A. Not that I remember of.

Q. They were satisfied with one time? A. The best I remember.

Mr. Leibowitz: Then on page 64:

"Q. You lay on your back there for close to an hour on that jagged rock screaming? A. Yes, sir.

Q. Was your back bleeding when you got to the doctor? A. I couldn't say.

Q. When you got to the jail was there any blood on your back? A. A little bit."

Mr. Leibowitz: Then again on pages 33-34:

"Q. One of them smacked you in the head? A. With a gun, yes, sir.

Q. With the butt end of the gun? A. Yes, sir.

Q. On the side of the head? A. Yes, sir.

Q. Right on the side of the head with the butt end of the gun? A. Yes, sir.

Q. Then it started to bleed? A. Well, a little bit, not much.

Q. How high up on the head did he hit you? A. He hit me somewhere between here and there (indicating).

Court: Where were you hit?

Witness: I would say between my eye-brow and my head up here (indicating).

Court: The top of your head?

Witness: Between the eyebrow and the top of my head.

Court: Between your right eyebrow?

Witness: Yes, sir.

Court: And the top of your head?

Witness: Yes, sir.

Court: Between those points?

Witness: Yes, sir."

Mr. Leibowitz: Turning to the testimony of Mr. Hill on page 216——

Court: That is the depot agent?

Mr. Leibowitz: The station master, your Honor.

"Q. You claim all the negroes got off that car? A. The ones that were arrested got off.
Q. All of them off of that one car? A. Yes, sir."

Mr. Leibowitz: Then to page 229:

"Q. When you saw these women they had coats on did they not, overcoats? A. No, sir, didn't have on any overcoat, had on overalls."

Mr. Leibowitz: We now go to the record in the Scottsboro trial, the testimony of Victoria Price, at Scottsboro, in the Weems-Norris case, page 25:

"Q. Which one is that? A. That one behind there, that is one with a gun, he got me by the leg and by the ankle and slung me back in the gondola and picked me up like he was going to throw me out."

Mr. Leibowitz: Page 24, same witness, Victoria Price:

"Q. That one yonder, Charley Weems? A. Yes, sir.
Q. With a gun or pistol? A. A pistol, a 45."

Mr. Leibowitz: Same witness, page 12, in the Powell-Roberson case:

"Q. Did you see the two men who carried the guns? A. Sure.
Q. They were both there? A. There was two that had guns absolutely, a 38 and a 45."

Mr. Leibowitz: The same witness, page 4 of the Patterson Scottsboro trial:

"Q. What did you see this defendant do in that fight? A. I seen him knock a boy in the head.

Q. With what? A. A gun.
Q. A pistol? A. A 38."

Mr. Leibowitz: Now, the testimony of Luther Morris, in the Weems record, Scottsboro trial, page 106:

"Q. What did you do with them? A. They run off and left me; they would not talk with me; they run back to Stevenson.
Q. You say you only saw two after the train passed? A. I saw five."

Mr. Leibowitz: Now the testimony of Lee Adams, in the record of the trial of Patterson in Decatur, beginning at the bottom of page 245:

"Q. How were you located with reference to the train, were you on the ground, or even with the train, or above it or how? A. I was sitting on a load of cross-ties and when the train come out of the cut I was something like level with the train.
Q. How far away from the train were you when it passed? A. I was just about a quarter.
Q. Quarter of a mile? A. Yes, sir."

Mr. Leibowitz: That is all of that testimony. I now want to offer the entire testimony of the defendant, Haywood Patterson, given by him in the trial at Scottsboro, direct and cross examination.

Mr. Knight: I have no objection to it.

Mr. Leibowitz: May we read that in Judge—do you have a copy of it over there?

Mr. Knight: I don't think we have. I know what it is, we have a printed record of it.

Court: Now listen; that calls for a new ruling on the proposition of the admissibility of the tes-

timony. I'll tell you what I think about it; I think it would be improper to read questions and objections to questions and things like that. I don't think it would be proper to put in all of his testimony in the case, but I do think it would be fair wherever it is necessary to make an answer make sense, all of that question ought to be read.

Mr. Leibowitz: I am going to read only such questions as are material.

Mr. Knight: No, it all ought to be read.

Court: I think the understanding was that you could read the testimony, and wherever it was necessary to make an answer make sense, the question be read so that it would make sense.

Mr. Leibowitz: My motion is this: I propose to read from that record, the testimony given by Patterson in Scottsboro, such testimony given by him which is explanatory or in contradiction of the testimony offered by Mr. Knight last night before we adjourned; that the defendant has the right to offer such testimony in explanation of, or in contradiction of the testimony culled from the very same record from which the prosecution read. I respectfully urge that as a matter of law to the court. I don't know whether I submitted that to the Court last night, and I want to make sure that I have submitted it, in order to obtain a ruling from the court.

Mr. Knight: Our position on that is this, we were taking excerpts from the testimony of Haywood Patterson on his trial at Scottsboro which were contradictory to his testimony taken here on this trial, and the defendant did attempt to show some other testimony given by Patterson on his trial in Scottsboro which he contends is explanatory of the testimony, or excerpts of testimony which I offered in evidence last night. Now,

today he announces to the Court that he is offering all of the testimony of Haywood Patterson in his trial at Scottsboro. I don't object to it, your Honor, let him read it all.

Mr. Leibowitz: Is there any objection to reading excerpts from his testimony which are explanatory of the testimony culled from the record by the prosecution?

Court: That would turn on the matter of construction as to whether it was explanatory or an answer. So far as I am concerned, I have grave doubts whether you could read any of it, without consent. However, I am inclined to allow you to read from that record any statements that shed light on the testimony offered by the prosecution.

Mr. Leibowitz: That is exactly what I propose to do. I am now reading from the record in the Patterson case in Scottsboro, from the bottom of page 55, of his testimony:

"Q. And that was a big box car? A. Yes, sir.

Q. That is the one you were on when you saw these boys down in there? A. When I seen them I crawled up on top and looked over in there.

Q. And you saw these girls? A. No, sir, I did not see no girls.

Q. Didn't you tell me while ago you saw them? A. No, sir, I didn't see any girls.

Q. You never did see any girls in there? A. No, sir, not 'till we got to Paint Rock.

Q. Who was doing the fighting in there? A. The other fellows.

Q. What other fellows? A. The other fellows that was on the train, I did not know their names.

Q. What color were they? A. Colored.

Q. The colored boys were fighting by themselves? A. No, sir, they were fighting at the white boys, the white fellows jumped off.

Q. Did they jump off? A. Yes, sir."

Mr. Leibowitz: Now, on page 88, at the bottom of the page:

"Q. All of you was fighting in there wasn't you? A. Not all were fighting, some were fighting.

Q. You were fighting? A. No, sir, I wasn't fighting.

Q. You helped to put the white boys off, didn't you? A. No, sir, the boys were surrounded, I could not get a chance.

Q. But that is what you went down there for? A. Yes, sir.

Q. Did you look around in the gondola in there? A. Yes, sir, I looked all around.

Q. You could see all over the gondola? A. Yes, sir.

Q. But you never saw any women in there? A. No, sir, I did not see any in there.

Q. Weren't you in the gondola when it got to Paint Rock? A. Yes, sir, I was in there.

Q. You were still in the gondola when it got to Paint Rock and yet you didn't see any women in there? A. No, sir, I didn't see any.

Q. And there wasn't any women in the gondola was there? A. No, sir.

Q. No woman on the gondola when you got to Paint Rock? A. No, sir."

Mr. Leibowitz: There are two witnesses I want to speak about, one is a physician in Chattanooga, Dr. Reisman, who testified on a former trial. I am informed that the doctor had two major operations this morning, but that he has left Chattanooga and will positively be here in one hour, he said he would be here by three o'clock.

Court: I will let you examine him out of order, if he gets here before we close the case.

Mr. Leibowitz: I want to call the Court's at-

tention to an affidavit signed and sworn to before a notary public in New York City.

Court: Let me see it. (Mr. Leibowitz hands paper to the Court.)

Mr. Leibowitz: I think your Honor has seen it.

Court: I probably just glanced at it.

Mr. Leibowitz: This is dated November 27, 1933, and reads as follows (starts to read affidavit).

Court: You needn't burden the record with that.

Mr. Leibowitz: I want to mark it for the record, together with the envelope in which it came. This affidavit and the envelope in which it came.

(The affidavit and envelope were handed to reporter who marked both: Exhibit No. 2 to statement of Mr. Leibowitz, one being marked Exhibit No. 2, and the other Exhibit No. 2, part 2.)

Mr. Knight: We object to that.

Court: All right, I'll sustain any kind of objection you want to make to that.

Mr. Leibowitz: I am going to now ask for a continuance of the case at the present time on the following grounds: On the day that the trial was set for arraignment, motion was made before your Honor for the issuance of a commission to take the interrogatories of one Ruby Bates, a material and necessary witness in this case; the witness was at that time out of the state and not subject to the subpoena of this Court; pursuant to that application we had immediately prepared a set of interrogatories, and served notice upon the Attorney General of the application for these interrogatories, and served a copy of the interrogatories upon him immediately, and asked him if he had any cross-interrogatories to offer. He stated that he would let us know about it,

and accordingly on Wednesday, and after this motion, and after the interrogatories were served on Mr. Knight, he submitted to Mr. Brodsky a set of cross-interrogatories to this Ruby Bates. Mr. Brodsky at the earliest possible moment mailed the interrogatories to the commissioner appointed. I offer now in evidence a receipt from the post office of registered mail, signed by the commissioner as having received the interrogatories on the 25th of November, 1933. Now, your Honor, by Special Delivery letter addressed to Mr. Joseph R. Brodsky, of counsel, Air Mail, we received an affidavit from the physician who has this Ruby Bates under treatment, stating that her physical condition was such as to not warrant the taking of her testimony, by reason of some major operation performed on the 24th of November. Now, this morning I received the telegram I now have in my hand, reading: "Deposition completed early this morning now in transit air mail stop should arrive tomorrow morning." This is dated November 29th, 1933.

Court: Who is that signed by?

Mr. Leibowitz: It is signed by a man named Joseph in Mr. Brodsky's office. Your Honor, according to this telegram, this testimony should arrive in the mails tomorrow morning, and I am asking that the case be postponed until tomorrow morning so that this important evidence may go before the jury.

The Court: I can't do that.

Mr. Knight: In justice to the Court, I want to say that I was entitled to ten days' notice of the interrogatories, and I waived that to save time.

Mr. Leibowitz: I want also to state for the record, that when that affidavit was received, I called up my assistant in my office and told him

that no matter how sick that girl was,—that the court here would not delay the trial,—and to see to it, if it were humanly possible, that the commissioner take that testimony so that it could get here, and I presume that the telegram that I have read to you is the result of my urgent instructions to my clerk in my office.

Court: I'll overrule the request.

Mr. Leibowitz: We reserve an exception.

Court: Anything further from the defense?

Mr. Leibowitz: I want also to state that we made application for the interrogatories at the earliest possible time on the opening of court on November 20th, when the case was set for arraignment.

Court: You have already shown when you did it, and "the earliest possible moment" would be surplusage.

Mr. Leibowitz: I want to respectfully except to the court's ruling.

Court: All right, you have that twice. Is there any more testimony for the defense?

Mr. Leibowitz: We are asking for a continuance for 40 minutes, in order to produce a witness that is on the way.

Court: The state has some rebutting testimony, and I have already stated to you that you may introduce this witness out of order, when the state introduces its rebuttal.

Mr. Leibowitz: That's all right. That is all we have for the present.

The affidavit, envelope, registry receipt, and telegram referred to by Mr. Leibowitz, are in the following words and figures, to-wit:

"Nove. 27, '33.

(Caption)

State and County of New York—ss.:

LOUIS DROSIN, being duly sworn deposes and says: I am a physician duly licensed to practice in the State of New York. Ruby Bates has been and is under my personal care and has on the 24th day of November, 1933, been operated on by me for a major abdominal condition and is at the present time in a critical condition. As her personal physician I deem it dangerous to her health and well being to be interrogated at the present time on matters concerning the Scottsboro cases, or any other matter. It is my opinion that Ruby Bates will not be fit for such interrrogation for about one week from today. However, should her condition so warrant, this interrogation may be conducted sooner.

LOUIS DROSIN, M. D. L. S.

Sworn to before me this
27th day of November, 1933.

MAX BLOOM,
Notary Public.
Kings Co. Clk's No. 375, Reg. No. 4490.
Certificate filed in New York County Clk's No. 1522, Register's No. 48956.

Term Expires March 30, 1933."

ENVELOPE ON FACE.

AIR MAIL. SPEC. DEL.

Post Mark.
New York N. Y. Nov. 27, 6 P M
Station W

Special Deliver Stamp and 8c. Air Mail Stamp. Anoth Post Mark that is not legible.

Mr. Joseph R. Brodsky
Cornelian Court Apts
Decatur, Ala.

ON BACK OF ENVELOPE

Louis Drosin, M. D.
302 West 86th Street,
New York. One or two undecipherable Post Marks.

REGISTRY RECEIPT.

Registered Article No. 177

Insured Parcel————

Return to: Joseph R. Brodsky,
a/c Cornelian Court,
Decatur, Ala.

On Reverse Side:

"RETURN RECEIPT. Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this card:

JULIUS APPLEBAUM
(Signature or name of addressee)

MARIE H. SMITH
(Signature of addressee's Agent.)

Date of Delivery: 11/27.33."

The telegram referred to is as follows:

Received at: "WESTERN UNION"

New York N. Y. 1133A NV 29 1933

Joseph R. Brodsky,
Court Room Decatur, Morgan County, Ala.

Deposition completed early this morning now in transit air mail stop should arrive tomorrow morning.

JOSEPH 1051 A

Thereupon the State rested.

Court: All right, gentlemen.

Mr. Leibowitz: While we are waiting I would like to call Mr. Bailey for a few questions.

Court: I don't see how you can do that.

(Without further objection Mr. Bailey was called to the stand.)

H. G. BAILEY, being sworn, testified:

Direct examination by Mr. Leibowitz:

Q. You were the prosecutor in the Scottsboro cases? A. Yes, sir.

Q. I want to ask you if, when you prosecuted the Scottsboro cases, you preserved the coat, overalls, dresses or the step-ins of Victoria Price as evidence in the case, just "Yes" or "No"? A. I don't know, sir.

Court: What have you to offer further, gentlemen?

Mr. Chamlee: Will you let me look out on the yard and see if the doctor is here, and hurry him in?

Court: Go ahead, but don't leave the court grounds.

(Mr. Chamlee returned and stated that he did not find the doctor.)

Defendant thereupon rested.

Argument started at 3:30 P. M.

The foregoing was the evidence and all the evidence taken at the trial of this cause.

Thereupon both parties summed up. During the summations by the state, objections were made, rulings rendered and exceptions taken as follows:

OBJECTIONS TO ARGUMENT.

Mr. Leibowitz: I object to the Solicitor's argument that Victoria Price said she rubbed herself off; she said she urinated.

Court: She said both. The objection is overruled.

Mr. Leibowitz: Exception.

Mr. Knight: I want to object to his arguing as to what Dr. Lynch said.

Court: Well, gentlemen, both sides have been arguing along lines that are highly improper. What has been said by a witness not put on the stand is not the law of this state nor of this nation.

Mr. Leibowitz: I think the record should show that what was said by me was in retaliation to the state's argument.

Court: It was answering improper argument by improper argument. I will exclude it.

Mr. Leibowitz: Exception.

Mr. Leibowitz: We object to the statement by the solicitor that if Lester Carter had had sexual intercourse he would not have been on the stand.

Court: The objection is overruled.

Mr. Leibowitz: Exception.

Mr. Leibowitz: We object to the statement by the solicitor that if you cannot avenge the assault on Victoria Price, you cannot stop the attacks on our womanhood. We object to it because it is an appeal to the passion and prejudice of the jury. And I therefore now move for a mistrial. It was not shown what State's Counsel said.

Court: I overrule the motion.

Mr. Leibowitz: Exception.

Mr. Knight then stated: "We have a passion for protecting our womanhood of the State of Alabama."

Mr. Leibowitz: He has repeated the statement, and we object to it.

Mr. Knight: I did not repeat all of it. I said "We do have a passion for protecting the womanhood of the state of Alabama".

The court charged the jury as follows:

Gentlemen of the Jury:

At a special term of the grand jury of Jackson County, Alabama, a grand jury of that county returned into the circuit court an indictment against this defendant, jointly with others. That indictment, leaving off the state, county and date, reads as follows: "The grand jury of said county charge that before the finding of this indictment, Haywood Patterson, Eugene Williams, Charley Weems, alias Charles Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, alias Clarence Morris, whose names to the grand jury are otherwise unknown than as stated, forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama." By due process of law this charge has been transferred to this county and this court in the 8th Judicial Circuit, of

the State of Alabama. That puts in the Circuit Court of this County jurisdiction to try and determine this case just as though the crime charged in the indictment had occurred in this county. This is a suit, not of Victoria Price against Haywood Patterson and those other parties, but it is a suit of the State of Alabama against these parties. Now, only Haywood Patterson is on trial; the others are not on trial and it is no concern of yours or mine what happened, or what may happen to the other defendants. You have nothing to do with that, and the fact that they are not on trial is not to be considered by you,—you have nothing to do with that. The crime charged in this indictment is known in law as rape. Rape is defined by the law to be the carnal knowledge of a woman forcibly and against her will. The offense is complete when the woman is made to yield through fear, and does not consent voluntarily or consciously. A man need not resort to force, but if on account of the circumstances, or the relationship of the parties, he intentionally, for the purpose of accomplishing his unlawful purpose, he puts her in fear of personal injury by violence, and she yields on account of these things, he is guilty of rape. I see that I used words there that do not make good sense. "Put her in fear of injury or violence" I should have said. Where the female is not an imbecile, or is not rendered unconscious or bodily weak by the administration of drugs or other substances, force is an essential element of the offense of rape. Force is either actual or constructive. Actual force would be the application of personal violence, literally. Constructive force is a force brought to bear on the mind, and amounts to mental force. Acquiescence obtained through duress of the mind of the woman, or by putting her in fear; that is constructive force, and is as much forbidden by law as actual force. If the act was committed by force, actually or legally implied, which is constructive force, against the consent of the

woman, it is rape without regard to whether the defendant puts Victoria Price, the prosecutrix in this case, in fear of her life, or fear of great bodily harm, in the accomplishment of his purpose. Consent or acquiescence obtained by duress or fear of personal violence will constitute no defense, the law regarding such submission as no consent at all. If the mind of the woman is over-powered by the display of physical force through threats expressly made or implied from the conduct of the man, and the surroundings, or she ceases to resist through fear of great bodily harm, the consummation of the unlawful purpose by the man is rape. The offense is complete when the woman is made, or caused to yield through fear and does not consent voluntarily, whether the apprehension of bodily harm is reasonable or unreasonable. While the law arms a woman who is assaulted by a man with intent to ravish her with the legal right to stand her ground, and if necessary, kill her assailant to protect her person from the gratification of his lust, the law does not compel her to resort to such means, and the fact that she does not so resort, does not strip the charge of the offense of rape, in and of itself. All the circumstances surrounding the commission of the alleged crime are to be considered, and whether the prosecutrix does or does not repel force by force, or resist her assailant to the utmost, if the act of penetration is actually accomplished by force, actual or constructive, as I have defined these words, and against the will of the prosecutrix, the defendant is guilty of rape. In considering all these questions, the relative size of the parties, the attitude of the defendant or his accomplices, if there are any, the social or racial conditions, are all matters to be weighed by you, and are questions to be passed on by you as to whether all the elements of the crime existed, and when the elements of the crime are shown by the evidence beyond a reasonable doubt, the crime is one of rape, although the prosecutrix may have been

shown to have made no actual effort to resist. The act must not have been by the consent of the woman, and in this case there is no claim by the defendant that the prosecuting witness, Victoria Price, gave her consent, but on the contrary, the defense is that the defendant did not have sexual intercourse with the prosecutrix, either with or without her consent. Where a woman charged to have been raped, as in this case, is a white woman, there is a very strong presumption, under the law that she will not and did not yield voluntarily to intercourse with the defendant, a negro, and this is true, whatever station in life the prosecutrix may occupy, whether she be the most despised, abandoned or ignorant woman of the community, or a spotless virgin, or a daughter of a home of luxury and learning. The law forbids rape, and that law is made for all, and reaches out its protecting arm for all, regardless of color, creed, or station in life. It is the glory of the law of this state, and of all the states of this Union, that its protecting arms encompass all womankind. If she has been violated unlawfully, she may appeal to the courts with an abiding faith that no accusing finger can point to her erring past or hopeless future, as an excuse for denying to her full protection of the law. Now, gentlemen, there is a principle of law involved in this case, technically known as aiding and abetting. That law is this: that any person who advises, encourages, either by act or word the violation of the law, is just as guilty as the party committing the actual wrong. It makes no difference and the punishment in the eyes of the law is the same. To illustrate: if a man should call on you for a gun, informing you for what purpose he wanted it, to-wit: to shoot or kill one of your fellow citizens, and you loaned the gun to him for that purpose, the law says you are a murderer, and you are guilty of murder, and will be punished in the eyes of the law as such. So, as applied to this case,—One other thing before I leave

that. The law on the question of aiding and abetting says that the mere presence of a party, at or while the crime is going on, and his presence is for the purpose of aiding encouraging, assisting or abetting in any way the commission of a crime, and giving his aid if it becomes necessary, and the party who is committing the crime knows that he is there for that purpose, he is as guilty as the one who committed the offense, although he never moved a muscle or said a word, provided his purpose there was to aid, encourage, abet or cause the other party to commit the offense, and such presence did aid. There is still another principle of law very much akin to that, and is known as the law of conspiracy. Now, a conspiracy is where two or more persons, either by pre-arrangement, or upon an emergency enter into a common purpose which contemplates crime, each is a conspirator, and if the purpose is to carry out such crime, each is guilty, whether he did an overt act or not; and this purpose extends to the proximate and natural consequences of such act. A very wide latitude is allowed in proving conspiracy, extending to everything said, and every thing done by any one of the conspirators in the execution of a common purpose. The conspiracy need not be proven by positive facts, but its extent and intent are to be determined by you, gentlemen, from the conduct of the parties charged with the conspiracy. It may be a mere gesture, a mere nod; it may be determined that there was a conspiracy by a consideration of all the facts and circumstances, and the situation of the actors, at the time, provided these acts and the circumstances permit a reasonable inference thereupon. When a prima facie conspiracy is established, any act or declaration on the part of the co-conspirators in connection with, and in furtherance of the common purpose is proper to be considered and weighed. That, gentlemen, is a statement of the law concerning the crime of rape. When this case was entered upon before you, the state read or stated

this indictment to you. That was the state's charge. The defendant in reply to that, said that he was not guilty, and that plea of not guilty, in law, denies every material charge made or involved in this indictment before you. This same law to which I have referred, guarantees to him the freedom of defense, and a fair, just and impartial hearing to determine his guilt or his innocence. He, like the woman I referred to, has guaranteed to him by the Constitution of the State of Alabama, and the United States, that he will receive such consideration, and that law and Constitution are all pervading; it is no respecter of persons; the most humble, the most debased, the most abandoned, the confirmed criminal, as to that matter, comes into court with that guarantee standing by him, and enters upon the trial with him. So solicitous is the law for an accused, that it declares that he is presumed to be innocent until his guilt is shown by the evidence beyond a reasonable doubt. This presumption enters the trial with him and abides with him until his guilt is so shown. By reason of that law, the defendant is not required to do anything when he is arraigned on that trial but to put in a plea of not guilty and sit down, and he cannot be convicted until the state has produced evidence before you that convinces your minds of his guilt, from the evidence, beyond a reasonable doubt. That is a presumption, however, which may be answered, met and overcome, and it is met, answered and overcome whenever, from all the evidence offered in the trial of a case, you are convinced beyond a reasonable doubt of his guilt. But it is not answered or overcome unless the evidence rises to that degree of credence. Now, in the trial of this case, as in all criminal cases, there are two main things to be considered. The first is what the law calls the corpus delicti, that is to say, the body of the offense. The body of the offense here is that this woman must have been ravished within the meaning of the definitions

given to you. That is, the offense charged. Now, that same rule of law applies with reference to proof beyond a reasonable doubt, and I will explain what that means directly. The first question to be determined in this case is, has there been an offense committed, and is the offense charged against the peace and dignity of the State of Alabama. So you take all of the evidence in the case to first determine whether or not that crime was committed by anybody. If you reach the conclusion that it has been, then the next question is, not who did it, but did this defendant do it. That is necessary in order to connect him with the crime.

Should you determine from the evidence that no rape had been committed, then your duty is ended and your verdict should be not guilty. But if you do not so conclude, then you take up the consideration of all the evidence, and the legal inferences to be drawn therefrom to determine whether this defendant did actually, as I have defined it to you, or did he aid and abet in the offense, or, did he conspire, as I have defined that to you, in the commission of the offense. Both of these must be shown by the evidence, or reasonable deductions therefrom, beyond a reasonable doubt. Gentlemen, suspicion is not evidence. It is not proof, and it is not a matter proper for you to allow lodgement in your mind for the purpose of considering the guilt or innocence of a party. His guilt cannot be shown by suspicion, nor can his defense be bolstered up by suspicion. The law requires evidence, that is, such as the court trying the case declares to be evidence by allowing the recital of it to you. That means arriving at the truth of a charge as established by the evidence; no need of me defining that. Evidence may be oral, or it may be documentary—we call that written, but it may be both. Oral testimony, of course, is what some witness has stated from the stand as to what he saw or what he heard. That is evidence, and then you, as jurors are authorized to apply your common sense, your common knowledge and observa-

tion to that evidence and say whether or not that evidence establishes an issue; you are also authorized to draw reasonable conclusions therefrom. Now, there is another classification of evidence, the kind of evidence we call direct evidence, that is, where some party appears and testifies to what he saw and what he heard. Then, there is what we call indirect evidence—you know it better probably as circumstantial evidence. That is more easily illustrated than it is defined. Where the jury takes the direct evidence and applies his reasoning power, aided by his experience and observation in the determination, or in trying to determine whether or not, from the evidence, the facts sought to be established can be drawn by the application of reason to the facts proven. To illustrate, and for illustration only, that it may aid you on the question of circumstantial evidence. Suppose you are passing through a forest, heavily timbered, and suddenly you come up to a place where every tree is blown down and up-rooted, saplings and all, and the tops of all are lying to the east. Now, that is direct evidence that you see the trees up-rooted; you see the positions of the tops. Now, you want to find out what caused the trees to be up-rooted and how come the tops to be all in one direction; nobody was there and no other evidence before you. You would naturally apply your past experience and observation, and you would reach the conclusion that these trees were up-rooted by some severe wind, and you would want to know from which direction it came. The very fact that the tops were all lying to the east tells you, from experience, that that wind was from the west, and you know just as well as if you had been there, and don't need somebody to tell you that that wind came from the west; they are things you conclude from what you do see. That is a somewhat strong illustration, I will admit, and you will not find the application of the principles of circumstantial evidence just as outstanding and clear at all times as that, but I am giving it to you so that you could be impressed with the meaning and purpose of it.

Now, according to the state's contention and theory, there are two outstanding witnesses for the state, as the claim, that show that Victoria Price was raped; I mean to say, if believed by you, and believed beyond a reasonable doubt, from all the evidence in the case. The law would authorize a conviction on the testimony of Victoria Price alone, if from that evidence, taken into consideration with all the other evidence in the case, both for the state and for the defendant, you are convinced beyond a reasonable doubt that she had been ravished. The law does not require corroboration. There may be cases where corroboration is to be desired, and it is always permissible to show it. So the state contends, on this question of corroboration, that Victoria Price, the prosecutrix, has been corroborated by the testimony of the witness Gilley. Now, gentlemen, corroboration means to support, to strengthen, to aid. It doesn't mean that everything the witness said, that there must be some other proof to come along and corroborate it; that is, said the same thing, and said it in the same way, but it does mean to say that before being corroborative it must aid or strengthen some material statement of the witness. The state further contends that she is further corroborated by the alleged statement or declaration of her companion when taken off the fateful train, making complaint that they had been attacked. Well, under the law, if you believe from the evidence believe from the evidence beyond a reasonable doubt that such complaint was made, the law says that that may be looked to, and if established, it may constitute a corroboration of the evidence of the witness to some extent. The state further contends in this case that both Victoria Price and Gilley are corroborated by other evidence in the case showing that a fight occurred on that train between Stevenson and Paint Rock. They claim and contend that the corroboration is in this; they claim both testified to a fight occurring on the train between the white boys and the negro boys between Stevenson

and Paint Rock, and the state says that fact is a corroboration of some parts of the testimony of the witness, Victoria Price, and also of Gilley. Now, they say that that fact, if it be one, is also corroborated by other witnesses who saw the scuffling, the alleged scuffling, or fight, and saw some of them jump off the train, or thrown off, and that blood was on their faces and on their person. Now, that is offered in corroboration of both Gilley and the witness Price. But the defendant contends that that is not to be considered as corroboration of Victoria Price as to a rape having been committed. The defendant says there was a fight on the train, but that it constituted no part of, or forerunner of any rape that then and there or afterwards occurred. It was simply a fight between white boys and black boys; that they were put off and that the blood that was found on them afterwards was the direct result of that fight; and that there was no rape in connection with it. Well, that is a matter that you have to deal with. I can't help you on that; that is a matter of weighing the evidence and drawing conclusions from the evidence, so you will have to deal with that by weighing the testimony on each side of that question, and, of course, if that explanation of the fight satisfies your mind that it was just a fight, and had no connection with the rape, then, gentlemen of the jury, that presumption has been met by the defendant's evidence in the case. Now, the state claims or contends that Victoria Price is further corroborated in that there was semen in the vagina and on other parts of the private parts. Well, as I understand it, there is no contention, and the point of contention does not center around that particular point. It is not claimed, as I understand it, that there was no semen found. The finding of semen certainly establishes one point, or one fact, and that is that Victoria Price had had sexual intercourse with a man. Then, the question on that point arises, how come it there? This must be met from the evidence or from

reasonable conclusions drawn therefrom. Of course, standing alone, and standing unexplained, the fact that it was found there, does, in law, in a sense, corroborate the statement or claim rather of the prosecutrix that she had been raped. But, it is not conclusive; it is not absolute; it is only one of the circumstances to be considered. It is subject to explanation, but gentlemen of the jury it must be explained by the evidence, or natural, logical conclusions to be drawn from the evidence, and evidence means evidence in the case. No mere suspicion, without evidence, that it could have been some other time or by some one else is a sufficient answer or explanation. Mark you, gentlemen, I am continually cautioning you that you have a right to look to the evidence in the case, and nothing but the evidence, but it is your right, and your sworn duty, as jurors, to consider what reasonable conclusions may be drawn from the evidence. Gentlemen, at this point, I desire to say to you that during the progress of this trial wherever the court sustained an objection to any question asked by either side in this case, that ended the matter. You, of course, have responsibilities, but you do not have any responsibility on the questions of law, and when the court rules on a question and said that question was not to be answered, that ended it so far as you are concerned, and it makes no difference to you whether the court is right or wrong, fair or unfair, you have no right or authority to supervise and review the rulings of the court. When you assume to do it, you violate your oath and step outside of your power and authority, and comments on the rulings of the court that were adverse to counsel is not to be considered by you in a case, and if you do consider such comments you have violated your oath. There is just common sense and reason in that. If a case is not to be tried under the rulings and direction of the court, then, gentlemen of the jury, when the court says a question shall not be answered, if that is to be used as legitimate argument,

to speculate on what the answer would be, then the party has gotten as much benefit from an adverse ruling as he would have gotton from a favorable ruling, and the whole action of the court would be nullified, and evidence that the court declared improper would go before the jury. If that is to be the law, then we could have no law. Gentlemen of the jury, there are some peculiar cases, or conditions in cases, where the failure of one party to call a witness might authorize an adverse presumption. But that is not this case, and it doesn't make any difference who called a witness, the thing you have to consider is, if the court allows the witness to testify, it doesn't make any difference the source the witness came from. What you are after is the truth, the truth to be determined under the evidence, and evidence is submitted to you for your consideration. When a witness is brought into court, and under the jurisdiction of the court during the trial, that witness is a witness for either side that desires to use him, and it doesn't affect his credibility, ordinarily, whether he is used by the party that has him subpoenaed or the other party, nor does it reflect on the guilt or innocence of the defendant, whether he had him subpoenaed, or didn't have him subpoenaed, as he has a legal, constitutional right to the benefit of his testimony, regardless of who had him brought into court. There is another rule of law applicable to this case, and as to that matter in all cases of this type, and that is that the party who presents a witness in the witness chair vouches for his credibility. Of course, there could be exceptions to that. The law doesn't mean that a man shall be butchered or entrapped by his own witness, mislead him off the stand, and then get on the stand and give adverse testimony against him, but the law does say, without some good reason, the party presenting a witness vouches for his credibility. Now, gentlemen I have referred to the expression that you must believe the defendant guilty beyond a reasonable doubt. That is rather a simple term,

but like a good many simple things it is rather hard to define.

It doesn't mean that you must believe it so that there is no doubt. It says a reasonable doubt. Now, gentlemen, you can't conjure up a doubt or arbitrarily establish one; it doesn't mean that. It means this in simple language: that when you enter upon the consideration of this case and dealing with any material phase of it that is necessary to make out the defense, if you have a doubt arising on that point that you find in the evidence,—not anywhere else,—if that doubt is created after an examination and consideration of the evidence, there is a doubt, a legal doubt, but it is no more. The law says that it must be a reasonable doubt. So, if a doubt of that character rises in your minds in the consideration of this case, the next thing the law requires you to do is to examine the evidence, and all of the evidence, to see whether or not that doubt is reasonable, that is, one that addresses itself to your minds as being one based on reason. If it does, it is a reasonable doubt, and if it is there regardless of whatever else may be there, the defendant is entitled to the benefit of that doubt and entitled to an acquittal. Now, gentlemen, that is about all the law there is to the case, as I see it. There is one other thing I will talk to you about, and that is about the witnesses. All I can do there is to give you some rules of law by which you are to examine and consider the evidence from the witnesses. Well, the first thing that suggests itself to my mind is this: in some instances is the testimony or parts of testimony of certain witnesses on the other trial. That is offered by what we call the official record in the case; that is a transcription of the testimony of the witnesses that were examined in one or the other of the former trials of this case, or in the trial of companion cases. Weems, for instance, is one. That is evidence in the case for you to weigh and consider along with the other evidence in the case, just as if the witness had appeared on this

trial and testified to the facts therein set down. Now, gentlemen, when you come to weigh the testimony of the witnesses, a good many things are proper to be taken into consideration, but all the things you do take into consideration, must be things found in the evidence, and not suspicion and not imagination. There must be no arbitrary figment in your mind. Cases are tried on the evidence, and the evidence alone. Of course when a witness testifies, his character for truthfulness is open to assault, and the law points out the method and mode of the assault, and that is to bring his neighbors and acquaintances into court and say: "I know this man; I know his reputation in the community where he lives for truthfulness", or his general bad character, either one. When that is done, that is a legal assault on his evidence, because it is shown by what we call his character,—but of course you can't show the character of a witness directly, because that is what he is; what is in his mind, his heart, his desires and aspirations, and his viewpoint of life and his duties in life. The law does the next best thing, and the only thing it can do. It says we can't furnish true evidence on character, but it permits you to show his reputation, and when you show that, it stands for his character. Of course, reputation is what he is reputed to be, and, being unable to show the one, you are authorized to show character by reputation. That is the legal method prescribed by law to assault the character of a witness, guaranteed to every man that comes into court to be tried. Of course, that is not the only way of arriving at whether or not a witness is telling the truth. When a witness takes the stand, not only what he says is evidence in the case, but he himself is evidence; you may look at his countenance, and the hand of God can be seen in his face by one that is expert enough; it's there whether you see it or not. Sometimes it is so plain that the wayfaring man may see it and know what it is, and while mortal man may not be able to see it, His hand is on his brow. You look at his

conduct on the stand; how does he impress you by the way he looks; by the way he acts and by the way he talks? Then, again, you are authorized in looking at him to apply your common knowledge and observation. What story is he telling? Is it reasonable? Does it appeal to your common sense? You have a right to look at that. Then, in weighing his testimony, is it corroborated by someone else,—not that somebody must come along and testify to the same facts that he did, but has some other witness whose testimony you believe, has he corroborated him on any material points in his testimony? If so, that should be used in weighing and examining his testimony. Has his testimony been impeached, or contradicted, rather, is the better term, by the testimony of some other witness or witnesses? Well, simply because somebody else swore differently does not establish the fact that he is wrong. First, determine which is right, to determine whether he has been successfully contradicted or not. If he has, you take that into consideration in examining his testimony to arrive at its probative force. You may look at a witness's environment, that is as shown by the evidence in the case, his associates and companions. Has he any bias? You will have to look to the evidence to determine that. You can't guess at it; the law is not guesswork. Does the evidence show any bias in any way, one way or the other? If so, you take that into consideration in weighing what he says. Has he any interest in the case? You will have to find that from the evidence. You have to look to the evidence to find all of these things, if you find them at all. Now, gentlemen, because a witness has not been corroborated, or even contradicted, if he be contradicted, or shown to have bias, that in itself and of itself does not warrant you in setting his evidence out of the case. That is true about interest as well. You are to find all of these things from the evidence. When you get to the defendant, the law steps in and say that whenever a defendant takes the stand and testifies in his own behalf, he

is an interested witness. You don't have to look any further to see whether he is interested or not; the law declares it. He is interested in the result of the case. He is to suffer the penalties of a verdict against him, or receive his freedom from a favorable verdict. I repeat that all these things, though he be the defendant, or what not, does not authorize you, by that alone, to discredit his testimony. Although he may be biased, although he may be interested, although his testimony may not be corroborated by other evidence in the case, you must not throw it aside, but it must receive your consideration. This case must be tried according to law. Your being here is to find the truth; not the absolute truth, because that is impossible in the human mind. All men are liable to err. The law doesn't require that you shall be satisfied to a mathematical certainty. The rule is that you must be so satisfied that you are convinced beyond a reasonable doubt. That is all, but it is that much. Something has been said through the case and argument about the defendant being a negro. I shall be ashamed of you if that is to enter into your consideration in searching for the truth in this case. No man is worthy to be put in the jury box that would reach the guilt or innocence of a man on any such contemptible grounds. By the law of Alabama and by the law of this nation men must stand on equal rights, so far as the law is concerned. He is entitled to expect and to receive the administration of the law in that method and none other. Whenever it is administered in any other way, the law has failed, and when the law fails, the government will fail. Gentlemen, go into the jury room there and take up the evidence in this case. You know it is written, "Come and let us reason together." That cannot be better complied with, in my mind, than in the jury room. That is what the law expects. It does not expect you to go into the room with some pride of your own fixed powers, or of your own mentality. You are expected to go in there and reason together. You are

not expected to sacrifice your own judgment, but you are expected to listen to other men's reasons. I realize, gentlemen, that I am getting on hard ground. It is human nature when we are,—particularly when it is made our duty, to hear and reach a conclusion,—it is rather difficult to hear other men's viewpoint on the same thing. You may look at him while he is making his statement, but the difficulty is, if you do not watch, you will be listening for the purpose of following his argument, so that when he finishes it to tear it to pieces. Don't argue that way. Hear one another, gentlemen. If after considering all the evidence in this case, under the methods I have tried to instruct you, if you are satisfied therefrom beyond a reasonable doubt that this defendant is guilty, then your verdict should be one of guilt, and if that is your verdict, there are two forms you may use: "We, the jury find the defendant guilty as charged in the indictment and fix his punishment at death." Or, if the evidence does not justify that kind of punishment, and you think he is guilty as charged, then it may assume another form, and that is: "We, the jury, find the defendant guilty as charged in the indictment, and we fix his punishment as (so many years in the penitentiary, not less than ten,—any amount above that, that you see fit, according to the evidence)." Gentlemen, if you are satisfied beyond a reasonable doubt that he is guilty and that his punishment should be death, that is to be your verdict, whatever your desires may be, outside of the evidence. You reach a verdict according to the evidence, as I have indicated, because that is the law, and that is what you have sworn to follow. On the other hand, if the evidence satisfied you beyond a reasonable doubt that death should not be the penalty, and you still think he is guilty, you should fix his punishment for a term of years as I have indicated to you, but you have no right to fix it in either one of the forms, if under your conscience, and under the evidence,—you believe from the evidence it belongs in the other. Take this case, gentlemen, and give it your consideration.

Gentlemen of the jury, all the way through I have cautioned you and tried to impress upon you that the verdict must be predicated on the evidence offered on the trial. If there isn't evidence to justify a conviction, then there ought not to be any. I have also tried to impress upon you that the duty rests upon the state, in the first instance, to convince your minds, beyond a reasonable doubt, by the evidence, of the defendant's guilt. Of course, you are not limited on that question to just the state's evidence. If you find in the defendant's evidence something that supports and corroborates the state's evidence, why that is as much to be legally considered by you in determining whether the offense has been made out, as if the state offered it, and on the other hand if you find from that offered by the state there is evidence corroborating the defendant's theory, he is entitled to the benefit of that. If there is not enough evidence to warrant a conviction, then there is a lack of evidence, and a lack of evidence that is necessary to make out an offense, is just as much to be considered as the evidence itself, because you have to consider the evidence to ascertain whether or not there is a lack of evidence. I believe I forgot one thing about the forms of the verdict. I gave you the forms of the verdict on conviction. If after considering all of the evidence in this case, you are not satisfied beyond a reasonable doubt that the defendant is guilty as charged, then he ought to be acquitted, and must be, under the law, and the form of your verdict in that event would be, "We, the jury find the defendant not guilty". Now, in trying to aid you about reasoning together in there, I do not expect you to reach the conclusion that I meant by that, that you are to destroy your opinion in there, and scuttle away from it. You are entitled to your opinion, that is, when it is based on the evidence.

Mr. Leibowitz: Defendant files a general exception to the charge.

Court: All right.

On December 29, 1933 defendant filed a motion for a new trial in words and figures as follows

(Caption)

Comes the defendant Haywood Patterson, named in the above styled cause, by his attorneys, Samuel S. Leibowitz, Joseph R. Brodsky, George W. Chamlee and Osmond K. Fraenkel, and moves the Court to set aside the verdict and judgment granted in this cause and to grant a new trial and for cause of new trial assigns the following reasons and causes, separately and severally, reserving, however, the right, in accordance with the suggestion made by the Court, to file an amended motion for a new trial after receiving the stenographer's minutes of the trial so as to incorporate therein any matters omitted herefrom or not fully covered herein.

I.

A new trial should be granted because the indictment found against your defendant in the above entitled cause is void for the following reasons:

a. That said defendant is a Negro.

b. That there were at the time of the finding of said indictment Negroes residing in Jackson County, where said indictment was made, who were, under the laws of the State of Alabama, duly qualified for jury service.

c. That in fact no Negroes were placed upon the jury roll of Jackson County from which was drawn the grand jury which found the indictment herein.

d. That the names of Negroes purporting to appear upon the jury roll in Jackson County when the same was produced in Court in November 1933 were not

in fact upon said jury roll at the time when said indictment was found but were fraudulently placed thereon subsequently.

e. That the finding by this Court that such names were not fraudulently placed thereon subsequent to the indictment herein was contrary to the evidence and was arbitrary and void and in violation of defendant's rights under the Constitution of the United States and its amendments and was in violation thereof.

f. That Negroes had been systematically excluded and were excluded from said jury roll of Jackson County solely by reason of the color and race of such Negroes.

g. That a motion was duly made prior to the trial of the indictment herein to quash the said indictment by reason of the foregoing in that such exclusion was in violation of the Constitution of the United States and its amendments and in violation of the Constitution of the State of Alabama.

h. That the denial by this Court upon the hearing had upon said motion after evidence had been introduced on behalf of defendant in substantiation thereof was contrary to the evidence and was arbitrary and in violation of defendant's constitutional rights as aforesaid, exception to which was duly taken.

II.

A new trial should be granted because requests for a change of venue were improperly denied in the following manner:

a. In March 1933 before Hon. A. E. Hawkins at the Circuit Court of Jackson County defendant re-

quested a change of venue to Jefferson County, Alabama, on the ground that a fair trial could not be had in any of the counties in the neighborhood of Jackson County. That said request was denied and instead a change of venue was granted to Morgan County to which denial defendant duly excepted.

b. That by reason of the hostile sentiment and feeling which dominated the inhabitants of Morgan County a fair trial was impossible in said county.

c. That this feeling became manifest during and after the trial of defendant before Hon. James E. Horton in Morgan County in April 1933.

d. That thereafter and in November 1933 defendant applied to Hon. W. Callahan in Morgan County for a further change of venue requesting a transfer of the trial of this case to Jefferson County upon voluminous papers and affidavits on file with this Court, which are hereby made a part hereof as though fully set forth herein, which motion was denied and exception duly taken.

e. That upon the examination of the prospective jurors herein it appeared that many of them had fixed opinions concerning the guilt of this defendant and his other co-defendants and that, upon the subsequent trial of Clarence Norris a very large number of the respective jurors expressed fixed convictions concerning the guilt of this defendant.

f. That the failure of the Court to grant a change of venue to Jefferson County was a denial to the defendant of his rights under the Constitution of the United States and the Constitution of the State of Alabama and was an abuse of judicial discretion.

III.

A new trial should be granted because the Court refused to quash the venire for the following reasons:

a. That there were at the time of the preparation of the jury roll of Morgan County from which were drawn the names of the prospective jurors called to try this defendant Negroes residing in said county duly qualified under the laws of the State of Alabama for jury service.

b. That there were no Negroes upon the jury roll of Morgan County from which were called the names of the said prospective jurors.

c. That Negroes have been systematically excluded and were excluded from said jury roll of Morgan County solely by reason of the color and race of such Negroes.

d. That a motion was made prior to the impanelment of the trial jury to quash the venire on the ground that said exclusion was in violation of the Constitution of the United States and its amendments and in violation of the Constitution and laws of the State of Alabama.

e. That the denial by this Court of said motion upon the hearing had thereon after evidence was introduced in behalf of the defendant in substantiation thereof was contrary to the evidence and was arbitrary and in violation of defendant's constitutional rights as aforesaid, exception to which was duly taken.

IV.

A new trial should be granted because the verdict of the jury and the judgment entered thereon are not

supported by sufficient legal evidence and are against the weight of evidence and the law and that all the credible evidence adduced at the trial failed as a matter of law to establish beyond a reasonable doubt the guilt of this defendant.

V.

A new trial should be granted because the Court refused to permit this defendant to prove material and necessary matters in his defense as follows:

a. Victoria Price, the prosecutrix herein, had testified upon the trial hereof that she had been raped by this defendant and others and in substantiation of such claim stated that semen from her body came upon her clothing.

b. That semen was found in the body of said Victoria Price shortly after the alleged occurrance complained of was also testified to by the physician who examined her at Scottsboro, Dr. Bridges.

c. That the presence of semen in the body of Victoria Price might be taken as corroborative of her charge of rape against this defendant was ruled by the Court in its charge to the jury.

d. It was material for defendant to show that the semen found in the body of Victoria Price and which she claimed was to be found upon her clothes was the result not of any rape committed upon her by this defendant or his other co-defendants but as the result of voluntary acts of intercourse committed by Victoria Price with others in the days immediately preceding the occurrance of the alleged rape.

e. This defendant sought to establish this material and necessary element in his defense in the cross ex-

amination of said Victoria Price and in the cross examination of Orville Gilley but was not permitted to do so by the Court.

f. Defendant also sought to prove this fact by the testimony of Lester Carter who was specifically asked whether he had not observed acts of intercourse between Victoria Price and one Tiller within two days of the occurrence of the alleged raping but said witness was not permitted to answer such questions.

g. In connection with this matter this defendant also sought to establish that Victoria Price had given a false account of her actions on the night preceding the alleged raping in that she had at the various trials at Scottsboro and also at the trial before Judge Horton in April 1933 testified that she had spent that night in Chattanooga at the home of one Callie Brochie whereas in fact she had spent that night in the jungles of Chattanooga in company with Ruby Bates, Lester Carter and Orville Gilley and in order to establish this fact sought to cross examine both said Victoria Price and said Gilley on the subject and offered to prove the same by the testimony of Lester Carter and the testimony of one Ramsey who had seen Victoria Price there as well as by reading the testimony of one Lewis from the record taken before Judge Horton, said Lewis having since deceased, all of which was not permitted by the Court.

h. That all of the foregoing matters were received in evidence by Judge Horton at the trial before him in April 1933 and were considered by him as reasons for reaching the conclusion that the testimony of said Victoria Price was unreliable and not entitled to credence and as reasons for setting aside the verdict of conviction against this defendant on the ground that the same was against the weight of the evidence.

i. That by the various rulings of the Court upon the trial of this case to which reference has heretofore been made and to which exception was duly noted in each instance, this defendant was arbitrarily and illegally deprived of an opportunity to prove an important element in his defense and to disprove the contentions of the prosecution.

VI.

A new trial should be granted because the Court refused to permit the defendant to ask Victoria Price on cross examination whether or not she had ever been convicted of a crime involving moral turpitude and specifically and separtely whether or not she had ever been convicted of adultery, fornication and lewdness, to all of which refusals exceptions were duly taken:

VII.

A new trial should be granted because the Court erroneously permitted one Hill to state an alieged conversation with Ruby Bates on the subject of complaints alleged to have been made by her after the alleged rapings in that said Ruby Bates was not a prosecutrix herein and particularly in that the Court deprived this defendant of an opportunity of contradicting said statement by refusing to permit an adjournment for the purpose of hearing the testimony of said Ruby Bates taken by deposition as will hereinafter be more specifically set forth.

VIII.

A new trial should be granted because the Court refused to grant defendant an adjournment so as to enable him to produce the testimony of Dr. Reisman although the Court was advised prior to the conclusion

of the taking of testimony herein that said Reisman had just finished an operation in Chattanooga, was leaving Chattanooga by automobile and expected to arrive in Decatur around 3 o'clock, and although the summations having commenced at about 3:30 P. M. on Wednesday, November 29, 1933, and said Reisman having entered the court-room a few minutes thereafter the Court nevertheless refused to direct a suspension of the summations so that the testimony of said Reisman could be taken, and the Court also refused to permit an entry to be made on the minutes of the request of defendant's counsel so that no exception could be properly entered thereon, all of which constituted prejudicial error in that the testimony of said Reisman was necessary and material to the defense and that said Reisman was prepared to testify as he had testified previously before Judge Horton and as the Court was advised at this trial he would testify, namely, that the presence of semen in the body of Victoria Price might be due to an act of intercourse committed by her at least thirty-six hours prior to the finding of the semen and also that the fact that the germs found in said semen were dead indicated that the act of intercourse which produced such semen had taken place some time prior to the finding and that had the act of intercourse taken place within the last few hours in the opinion of said expert the germs would have been living.

IX.

A new trial should be granted because the Court refused to grant an adjournment of the trial so as to permit the reading to the jury of the deposition of Ruby Bates taken upon a sick-bed although the Court had prior to the commencement of the trial been advised that said Ruby Bates was sick and had permitted the issuance of a commission to take her testimony, and although on November 27th the defendant answered that he was not

ready because of the non-arrival of the interrogatories issued pursuant to such commission, and called to the Court's attention the seriousness of the situation and the importance of the testimony of said Ruby Bates who had at Scottsboro been a co-prosecutrix with Victoria Price and at the trial before Judge Horton in April 1933 had rtpudiated her testimony at Scottsboro and completely exonerated this defendant and his co-defendants from any crime whatsoever, and although the Court's attention was again called on the morning of November 29, 1933 to the fact that the interrogatories had been taken and were on their way and were expected to arrive the following morning, said information being contained in a telegram from the Commissioner appointed by the Court. Thereupon and upon the conclusion of the taking of testimony at about 2:30 P. M. on November 29th the Court refused the defendant's request for an adjournment until the following morning. The interrogatories actually arrived in the office of the Clerk of this Court at 9 A. M. on the morning of Thursday, November 30th, before the case was actually submitted to the jury for its consideration and attention was called to their arrival.

X.

A new trial should be granted because the defendant was not accorded a fair and impartial trial in accordance with the Constitution of the United States and the amendments thereto and the Constitution of the Stae of Alabama for he following reasons:

a. The defendant was tried in a county which seethed with hostility against him, his co-defendants and his attorneys, by reason of which it was necessary to have armed guards at the trial and to furnish the chief counsel for the defendant with armed protection.

b. That prospective jurors had fixed opinions con-

cerning defendant's guilt and that prevalence of such fixed opinions among the community was further established by the large number of prospective jurors having such fixed opinions of guilt who admitted the same in the Norris case immediately following the trial of this defendant.

c. In that the Court denied the request of the defendant to excuse for cause a number of prospective jurors who admitted that they had a fixed opinion which would require defense testimony to change.

XI.

A new trial should be granted because the Trial Court was prejudiced against this defendant and made its prejudice manifest to the jury throughout the trial and refused defendant the fair and impartial trial guaranteed to him by the Constitution and Laws of the State of Alabama and the Constitution of the United States in the following respects which are not intended to be exhaustive in that defendant has not before him the record from which to specify all the acts complained of:

a. In that the Court showed resentment and animus toward defendant's counsel as appears throughout the record.

b. The Court characterized questions by defendant's chief counsel, Samuel S. Leibowitz, as vicious and on numerous occasions when sustaining objections interposed by the prosecution unnecessarily commented to the jury that the questions excluded were improper and illegal and in some cases adding that defendant's counsel knew that they were whereas the Court made no similar remarks concerning improper questions asked by the prosecution when objections to these were sustained.

c. That on numerous occasions the Court objected to

questions asked by the defendant's attorneys without any objections being made by the prosecution and frequently suggested to the prosecution that it enter objections.

d. That the Court on many occasions came to the assistance of witnesses for the prosecution when the same were being pressed by defendant's counsel and arbitrarily and illegally interfered with the proper conduct of the cross examination by defendant's counsel.

e. That the Court did not give defendant an opportunity of having a jury free from preconceived opinion against him in that the Court refused to permit the prospective jurors to state whether or not they had such opinion until the Court had first given an alleged definition thereof and that such definition as given by the Court was improper and prejudicial to the defendant, and that this was made manifest not only in the case of this defendant but also in the case of Norris who succeeded him.

f. That the Court refused to grant reasonable adjournments as requested by the defendant to enable him to produce the testimony of his expert Reisman and introduce the deposition of Ruby Bates under the circumstances hereinabove set forth although in the succeeding Norris case the Court granted the State an adjournment for the purpose of producing the witness Luther Morris, thus indicating bias and favoritism and prejudice against the defendant.

g. That the Court in its charge analyzed in some detail the testimony of the witnesses for the prosecution but made no attempt to analyze any of the testimony of the witnesses for the defense, except that the Court made a referenec to the witness Bridges whom the prosecution had refused to call and who was called by the defense and in referring to the testimony of this witness merely referred to a part of the testimony which the Court stated

tended to corroborate the prosecution, failing to call attention to any of the evidence of this witness which discredited the prosecution although the testimony of this witness was one of the chief grounds which induced Judge Horton to declare the testimony of the prosecuting witness Victoria Price to be unreliable and which induced him to set aside the verdict rendered in April 1933 as against the weight of evidence.

h. That the Court's reference in its charge to the testimony of the witness Bridges that semen was found in the body of Victoria Price and that this was corroborative of her testimony was particularly prejudicial because the Court had refused to permit the defendant to show that the semen had been due to causes other than the rape which was claimed had been committed by him.

i. That the Court charged that there was a very strong presumption that a white woman would not yield voluntarily to intercourse with a Negro, thus prejudicially emphasizing the fact that the defendant was a Negro, and that this was the intention of the Court appears from the fact that in the charge in the succeeding Norris case this remark was omitted, the Court then stating: "and I'm not raising the color line either".

j. That the Court completely forgot to charge that the jury must bring in a verdict of acquittal if the evidence justified such verdict until defendant's counsel called attention to his omission, although he had charged the jury as to the two forms in which they might render verdicts of guilty.

k. That the Court misled chief counsel for the defendant, Samuel S. Leibowitz, who was not thoroughly familiar with Alabama practice, in advising him that specific exceptions to the Court's charge were unnecessary and that exceptions to such charge could be raised for the first time on the motion for a new trial and then refused

to permit defendant's counsel to make a record of these circumstances.

XII.

A new trial should be granted because the chief prosecuting attorney Thomas E. Knight, Jr. was permitted in summation to the jury to make an appeal to passion and prejudice in that he asked the jury to convict this defendant so as to prevent attacks upon white women by Negroes in other cases and when accused of making an appeal to passion by defendant's attorney admitted in open Court and before the jury that he was making an appeal to passion. Thereupon defendant's counsel asked the Court to declare a mistrial, which motion was denied and exception duly noted. The Court failed in any way to rebuke the Attorney General for the unwarranted statement or to instruct the jury to disregard the same with the result that prejudicial error was committed.

XIII.

A new trial should be granted because of errors committed by the Court in its charge as follows:

a. The Court charged that there was a very strong presumption that a white woman would not voluntarily yield to intercourse with a Negro.

b. The Court charged that the mere presence of a person might be sufficient to make him an abettor if his presence encouraged or aided another person to commit the offense without requiring the jury to find that the defendant intended that his presence should have such result.

c. The Court charged that the proper way to impeach the credibility of a witness was to produce wit-

nesses as to the reputation of that witness for veracity thus indicating to the jury that the attempts made by defendant's counsel throhgh the trial to impeach the credibility of various prosecution witnesses were not sufficient to that end because no such reputation evidence had been offered.

All of the foregoing grounds are set forth separately as well as together and in support thereof reference is made to affidavits annexed hereto as well as to the record and motions heretofore filed and to the opinion of Judge Horton hereinbefore referred to on file with this Court.

Dated, New York, December 28, 1933.

Respectfully submitted,

SAMUEL S. LEIBOWITZ,
JOSEPH R. BRODSKY,
GEORGE W. CHAMLEE,
OSMOND K. FRAENKEL,
Attorneys for Defendant Haywood Patterson.

Annexed to said motion was filed the following affidavit:

(Caption)

State of New York,
City of New York,
County of New York—ss.:

ELIAS M. SCHWARZBART, being duly sworn, deposes and says:

That he is an attorney at law duly admitted to practice in all the courts of the State of New York and has

been and still is an assistant upon the staff of the attorneys for the defendant. Your deponent makes this affidavit in support of the motion for a new trial.

Your deponent attended the trial of Haywood Patterson and also the trial of Clarence Norris had in November and December at the City of Decatur, and was present practically throughout the entire proceedings and particularly during the time when the conversations and incidents hereinafter referred to took place.

Your deponent avers that the trial of Haywood Patterson was had under conditions and in an atmosphere of extreme and palpable hostility and prejudice against the defendant, his codefendants, and attorneys for the defendant, so that at all times the lives of the defendant, his codefendants and counsel for the defense were in constant danger, and in the prevailing atmosphere of prejudice, the defendant could not and did not procure a fair and impartial trial.

That in order to safeguard the lives of the defendants, his codefendants and their counsel, the court found it necessary to swear in a considerable number of deputies, including approximately twenty deputies from Birmingham. That these deputies accompanied the defendants and their counsel to and from the court room and constantly watched over them.

That the prevailing sentiment of hostility against the defendant and his codefendants was eloquently demonstrated by the fact that during the examination of the prospective jurors in the above entitled cause and in the cause of the State of Alabama against Clarence Norris, it appeared that a considerable portion of them had fixed opinions concerning the guilt of the defendant and his codefendants. That the number of these prospective jurors in the Patterson case who stated they had fixed opinions was approximately twenty and in the Norris case, the number was approximately thirty-five. The exact number will be presented to the court in the amended motion, as the same will be revealed by the transcript

of the record now in preparation. That this number would undoubtedly have been even greater had it not been for the fact that the court defined fixed opinion in a manner to include many prospective jurors who would likewise be excluded, as it set forth in the motion for a new trial.

In the motion for a new trial, it is set forth that the court erroneously refused to grant the defendant an adjournment so as to enable him to produce the testimony of Dr. Reisman. The facts concerning this matter, on the personal knowledge of your deponent, are as follows:

The trial of the defendant commenced on Monday, November 27, 1933, and the introduction of evidence was completed at about 2:30 P. M. Wednesday, November 29, 1933. On Tuesday, November 28, 1933, Mr. Brodsky, one of the attorneys for the defendant communicated with Dr. Reisman who resides in Chattanooga to arrange for his appearance at the trial of the defendant as a witness on behalf of the defense. Dr. Reisman stated that he would arrive the following morning. On Wednesday morning, November 29, 1933, Mr. Brodsky again called Dr. Reisman who informed Mr. Brodsky that he was delayed in Chattanooga in order to perform an emergency operation but that he would be ready to leave at about a quarter of twelve A. M. that morning and could be expected in Decatur at about three o'clock or a little later. Mr. Brodsky thereupon at about noon of that day informed the court of the above facts, also advising the court of the importance and materiality of Dr. Reisman's testimony, to wit, that said Dr. Reisman was prepared to testify as he was previously prepared to testify before Judge Horton; that the presence of semen in the body of Victoria Price might be due to an active (*act of*) voluntary intercourse committed by her approximately thirty-six hours prior to the finding of the

semen and also that the fact that the germs found in said semen were dead indicated that the active (*act of*) intercourse which produced such semen had taken place a considerable time prior to the finding. That had the act of intercourse taken place within the last two hours, the germs would have still been living.

The defendant had finished with its last witness at approximately 2:30 P. M. Wednesday afternoon and one of counsel for the defense thereupon informed the court that Dr. Reisman had not yet arrived but that he would be there at about three o'clock. Counsel requested that court be adjourned until the following morning. This request the court refused to grant and an exception was duly noted. The court was thereupon adjourned for several minutes and at 3:30 P. M., the said Dr. Reisman, having not yet arrived, the court directed that the case be closed and that the summations commence. To this direction, the defendant duly excepted. At 3:40 P. M., or about ten minutes after the case was closed, Dr. Reisman actually arrived in the court. Mr. Brodsky thereupon immediately informed the court of Dr. Reisman's arrival and asked that the case be reopened to allow the testimony of Dr. Reisman. This the court refused to do. Mr. Brodsky thereafter requested that the court allow the stenographer to make an entry on the minutes of this request and of the court's refusal to grant this request so that an exception could be duly noted, but this was also refused by the court.

In the motion for a new trial it is set forth that the court refused to grant an adjournment of the trial to await the arrival of the deposition of Ruby Bates, a witness for the defense. The facts of this matter, on the personal knowledge of your deponent, are as follows:

On November 20, 1933, which was the day of the arraignment of Haywood Patterson and his co-defendants, the defendant moved before the court for the appointment of a commission to take the testimony of Ruby Bates, who was then without the state. The said

day was the earliest day on which the said application could be made for the reason that it was the day of arraignment and also for the reason that the defendant, through his counsel, did not know until a few days prior to said day that Ruby Bates would not appear personally to testify at the trial, as is more fully set forth in the papers attached to said application heretofore filed with the court. The proposed interrogatories were served on the Attorney General, Honorable Thomas E. Knight on that day. Cross interrogatories were served upon the attorneys for the defendant on Wednesday evening, November 22nd, whereupon the defendant served rebutting interrogatories. Thereupon, the following morning, the interrogatories, together with the commission, were mailed to New York via special delivery airmail. On November 27th, at the opening of the trial of the defendant, defendant stated that he was not ready to proceed because the said deposition of Ruby Bates had not yet been received and one of counsel for the defense advised the court that a telegram had been received stating that Ruby Bates had just been operated upon and that her deposition could not be taken for several days. The court nevertheless directed that the trial proceed, to which an exception was duly noted.

On Tuesday, November 28th, a special delivery communication was received from New York enclosing a certificate, duly sworn, of a doctor who had Ruby Bates in attendance, certifying to the fact that Ruby Bates had just been operated upon and that her physical condition was such that she could not be interrogated for several days. Counsel for the defendant presented this affidavit to the court.

On Wednesday morning, November 29th, the attorneys for the defense received a telegram from the commissioner advising them that the deposition had already been taken and that they were already in the mails and would arrive in Decatur the following morning.

This telegram was immediately shown to the court. The attorneys for the defense thereupon requested the court to adjourn the trial pending the arrival of the interrogatories on the following morning. This request was repeated several times during Wednesday, November 29th, and was each time refused by the court and to each refusal an exception was duly noted.

The case was closed by the court over the objection by the defendant at approximately three o'clock P. M., November 29th. The interrogatories and all the papers properly to be returned by the commissioner appointed by the court, actually arrived in the office of the clerk of the court at nine o'clock in the morning the following day, Thursday, November 30, 1933. At this time, the case had not yet been submitted to the jury, and the court's attention was called to the arrival of the interrogatories.

ELIAS M. SCHWARZBART.

Sworn to before me this
28th day of December, 1933.

FAY SIEGARTEL,
Notary Public.

On December 28, 1933 simultaneously with the mailing of the foregoing motion defendant's counsel telegraphed the Court stating that the motion had been mailed and requesting a continuance. The Court on December 29th wired to counsel for the defendant granting the continuance to January 26, 1934. On January 10, 1934 counsel for the defendant wrote to the Court advising it that the minutes had not yet been received and requesting a further continuance so as to permit amendments if deemed necessary. The Court then suggested alternative dates to counsel for the defendant and the date of February 24th was selected by counsel. The Court continued the matter to February 24, 1934.

A copy of the foregoing motion was served by mail on the Attorney General of the State of Alabama acting as Solicitor for the State and retained by him without objection.

On February 22nd, 1934, defendant filed the following additional affidavit:

(Caption)

State of New York,
City of New York,
County of New York—ss.:

ELIAS M. SCHWARZBART, being duly sworn, deposes and says:

That I am an attorney at law duly admitted to practice in all the courts of the State of New York with offices at 100 Fifth Avenue, Borough of Manhattan, City and State of New York. I have been and still am an assistant of the staff of the attorneys for the defendant. I make this affidavit in support of a motion for a new trial herein.

I attended the trial of Haywood Patterson and also the trial of Clarence Norris held in November and December, 1933, in the Circuit Court of Morgan County at the City of Decatur before Honorable Judge W. W. Callaghan. I also attended the previous trial of Haywood Patterson held in the Circuit Court of Morgan County at the City of Decatur, before Honorable Judge James E. Horton in March and April of 1933. I was present in court throughout the aforementoined trials and all the preliminary proceedings had in connection therewith, and particularly during the times that the events and happenings hereinafter set forth occurred. I was present in court during the previous trial of Haywood Patterson and had before the Honorable Judge James E. Horton in April, 1933, throughout the time

that Victoria Price, the prosecutrix, and the following witnesses on behalf of the defence testified: Lester Carter, Ruby Bates, George W. Chamlee, Beatrice Maddox, Dallas Ramsey, and M. L. Lewis. I distinctly recall the testimony given by each of the aforesaid persons at that trial. However, since that time and for the purpose of preparing this affidavit, I have refreshed my recollection of their testimony by carefully reading the same as it appears in the official transcript of the aforesaid trial as certified by Harold Harlin, official court stenographer. I will briefly summarize the substance of the testimony of the aforesaid witnesses concerning the events that transpired on the day or days immediately preceding the alleged attack, all of which said testimony was excluded by Honorable Judge W. W. Callahan in the trial of the above entitled cause, and as the defense contends, erroneously.

The testimony of Victoria Price given at the trial in April, 1933 of Haywood Patterson, as to the events occurring up to the time that she boarded the train at Chattanooga is in substance as follows:

> Mrs. Callie Brochie was a woman in Chattanooga. She kept me and Ruby Bates the night we went to Chattanooga. Ruby Bates and I left Huntsville for Chattanooga on March 24. We were both dressed in overalls. Lester Carter did not leave with us. I know Jack Tiller, he was my boy friend before I left Huntsville. He did not introduce me to Lester Carter, I was introduced to Lester Carter in Scottsboro in the jail. Tiller, Ruby Bates and Lester Carter did not come to my home one night two or three days before I left Huntsville. I did not tell Lester Carter I would find him a girl. I did not introduce Ruby Bates to him. No one knew we were leaving Huntsville but me and Ruby Bates, we were hunting work. I did not go walking with

Tiller, Carter and Ruby Bates along the L. & N. railroad tracks the night before I left Huntsville and I did not have intercourse on the ground with Tiller while Ruby Bates had intercourse with Lester Carter right beside me. I never was in Lester Carter's company before I was in Scottsboro in jail. I did not have intercourse with Tiller a short time before I left Huntsville on the railroad tracks. I did not stay all night with Tiller in a box car before I left Huntsville and neither did Ruby Bates with Lester Carter. I did not meet Tiller, Lester Carter and Ruby Bates and make plans to go on this trip to Chattanooga. Tiller was at my home the night before I left Huntsville. I did not go walking or riding with him. Tiller did not see me off at the train. I did not go to Chattanooga with Lester Carter. We were dressed for the trip in a shirt, step-ins, three dresses, overalls, coat or wrap, hat, stockings, shoes and garters. We arrived in Chattanooga between six and eight. We did not intend to put up at Callie Brochie's that night, we were hunting a place to stay. I was broke. I knew Mrs. Callie Brochie lived in Chattanooga, I did not know her name, only Mrs. Callie. I did not meet Gilley that night in the railroad yards in Chattanooga. When I got off at Chattanooga there was a boy standing at the depot and I asked him did he know where we could get a place to stay. I first asked him did he know a woman by the name of Callie and he said there was a Callie down here on 7th Street, four or five houses from the corner. He did not go with us, he told us how to get there and we went alone. I had never been to that house before. The best I remember it was a four or five room house, kinda of a boarding house, wooden. Mrs. Brochie was sitting on the porch. We stayed at her house that night and

had a meal there, Mrs. Brochie served us. I did not know her before as Mrs. Brochie, I knew her as Martin. I asked the boy did he know where Mrs. Callie lived. He said there was a Mrs. Brochie down there at that street and her first name is Callie. I did not know for sure whether the lady I had in mind was Mrs. Brochie. We got up the following morning. When we got to Mrs. Brochie's house we did not have overalls on, we had pulled them off at the depot and left them under a rock. The following morning (March 25) Ruby Bates, Mrs. Brochie and myself rode out in Mrs. Brochie's car to a mill looking for work. I do not know the name of the mill, I can't describe it. The best I remember, we went to only one mill. I do not remember whether I testified at the other trials that we went to every mill in town looking for work. We came back in the car to Mrs. Brochie's house, we stayed there a little while and had a meal there. Then Mrs. Brochie drove us down to the depot in the car. It took about five or ten minutes. I do not know how far it was from her house to the railroad yards. We left Mrs. Brochie at the railroad yards. I found out when the train was coming back to Huntsville by asking a man there, and he said between eleven and twelve. It wasn't a colored man. We did not meet Gilley or Lester Carter at that time, it was later. It is not a fact that I, Ruby Bates and Lester Carter arrived in Chattanooga about 7:30 (March 24). I never seen Lester Carter until they put us in jail in Scottsboro. We did not meet Gilley that night by Gilley asking Lester Carter for a match. Lester Carter, Ruby Bates, Gilley and myself did not then go into the "hoboes jungle" and build a fire. I do not know anything about the jungles. Lester Carter and Gilley did not then leave us

and were looking for food and then bring some back. Gilley did not sit with us all in the jungle, singing songs that night around a campfire. I did not know anything about that, I was not in any jungles, I was at Mrs. Brochie's. Gilley did not have intercourse with me that night in the jungle. I do not know a negro by the name of Lewis, I do not know any negroes. I have never been to Lewis' cabin in the jungle on other occasions asking for food while hoboing from Huntsville. I never was in Chattanooga before. It is not true that I sat there all night in the jungles with Ruby Bates, Lester Carter and Orville Gilley and that two negroes came along and I asked them when the train for Huntsville was going by. I never spoke to a negro while I was in Chattanooga. I did not tell these two negroes my old man had gone to get something to eat and I was waiting for my old man to come back. I did not tell one of the negroes I was hoboing, and they did not tell me that the Champion Mill was hiring help and suggest that we go try them. There was no fight between Lester Carter and one of the negroes because I told him the Negroes had insulted me.

The following, in substance, is the testimony given by Ruby Bates at the trial of Haywood Patterson in April, 1933, before Honorable Judge James E. Horton, concerning events that transpired up to the time she boarded the train at Chattanooga, together with Victoria Price, Lester Carter and Orville Gilley.

I know Victoria Price, I worked in the mills with her in Huntsville. Victoria Price and I met Lester Carter and Tiller when they were on the chain gang. This was before we left Huntsville for Chattanooga. A short time before we left Huntsville, Victoria Price and I met Lester

Carter and Tiller. They came to the mill one afternoon where we were, on Monday afternoon, before we left on Tuesday. The four of us all left and walked up the Pulaski Pike to the L & N Railroad. It was night time. I had intercourse that night with Lester Carter, and Victoria Price had intercourse with Jack Tiller in my presence. It started to rain and got into the box car and the four of us stayed there the rest of the night. That night we made an appointment to go out of town. The next day, Tuesday, Lester Carter, Victoria Price and I left Huntsville together. Tiller did not join us. We went to Chattanooga. We did not spend the night at Callie Brochie's. We spent the night in the hobo swamps near the railroad yards, the four of us, me, Victoria Price, Lester Carter and Orville Gilley. We were there all night. While Orville Gilley and Lester Carter had stepped off, we asked two negroes when did the freight train going west leave and they said about 11:15. When Lester Carter came back, Victoria told him two Negroes had come down to where we were and said something to us out of the way and Lester Carter took out after the Negroes and had a fuss with some Negroes, I couldn't say who it was. We boarded the freight train going back to Huntsville, Orville Gilley and Lester Carter were with us.

The following is, in substance, the testimony of Lester Carter given at the aforesaid trial of Haywood Patterson in April, 1933, before Honorable Judge James E. Horton:

Back in 1931 I was in a jail at Huntsville serving for time for vagrancy or hoboing. While in jail I met Victoria Price and Jack Tiller who were also in jail. While in jail I met Ruby Bates who

was a visitor at the jail. I served about forty-eight or forty-nine days. Victoria Price introduced me to Ruby Bates. After I got out of jail I saw Victoria Price again, a short time before I left Huntsville. I and Tiller met her late one afternoon as she was coming out of the mill in Huntsville. We went to her mother's home where she lived (Lester Carter then described the home in detail). Jack Tiller introduced me to Victoria's mother as Ma, as a friend from Knoxville, Tennessee. Ruby Bates was not there that night. I was talking to Victoria Price's mother. After a bit Victoria Price and Jack Tiller went into the back room, and after a short bit returned in the room and Jack and I left. The first night we made an appointment for the next night to meet the girls near the mill at seven o'clock. We met them. Jack Tiller and Victoria Price said they knew where we could go and see fun, take a walk for instance. We walked up the railroad yards until we came to the woods, jungles out in the suburbs of Huntsville. That night I had intercourse with Ruby Bates and Jack Tiller with Victoria Price. (The court excluded the testimony of intercourse between Lester Carter and Ruby Bates.) I saw Jack Tiller have intercourse with Victoria Price. The first time was in the jungles around eight or nine o'clock. Then it began to rain and the four of us got into a box car and we had a couple more intercourses with the girls. We stayed there all night. We talked and planned this hobo trip. They said they wanted to go to Chattanooga or some town away from here, that they were sick of the place at the mill, it didn't pay enough wages, and we could go some place and they could "hustle" the town and Jack and I could get a job and work. Victoria Price knew me as Lester Carter. We stayed

in the box car until daybreak then we got out, the girls went to their home and Jack and I went to Jack's home. The following night we four went out for another night and we discussed the plans of the trip. We decided to make the trip by freight train. Victoria Price said it would be alright for her for us three (Victoria Price, Ruby Bates and Lester Carter) to go to some city and as far as Jack Tiller is concerned, we were to drop him a note back and he was to come to our destination where we stopped over. We made a definite appointment to leave Huntsville on the three o'clock train east bound. The following day at about 2:30, I met Ruby Bates and Victoria Price at the railroad yards to catch the freight train out. Jack Tiller was there. When the train pulled in, Victoria Price, Ruby Bates and I boarded the train. The girls were dressed in overalls, ladies' overcoats and hats. We got in a box car, there were a couple of Negroes and several white men in the box car. We rode all the way to Chattanooga in the box car. I spoke very little to Victoria Price and Ruby Bates. We had an arrangement about that. We talked about not noticing one another too much, we might get arrested for hoboing and be caught for crossing the state line. We arrived in Chattanooga about eight o'clock in the evening. Three of us got off the train together and we started walking around looking for some place to sleep for we were all broke and had no money. We met a boy who said his name was Carolina Slim. I found out later his name was Orville Gilley. He asked me for a match to stop me for a conversation. I gave him a match and made him acquainted with Victoria Price. Orville Gilley said he was accustomed to the jungles. We walked up the spur track of the railroad toward the jungles. We arrived in some

woods near a little lake. Gilley made a camp fire out of the jungle wood sticks and Victoria Price and Ruby Bates stayed by the fire while Gilley and I went for supper. We went over on the Rossville Boulevard, and stopped at Nell Booth's Chili Parlor. She gave us food and coffee and some cans to cook our coffee in which we took back to the girls. We returned to the jungles and found tht girls there. We had our lunch and after that Gilley told us railroad stories. We stayed in the jungles until about four o'clock in the morning, pretty near daybreak. Gilley and I left the girls, went back to Rossville Boulevard to bum our breakfast. I could not find any food so I came back to tell the girls Gilley had gone for food and we would wait until Gilley came back. When I got back, the girls had moved from the place where they were supposed to wait for us guys, and I seen them at a distance away down in the jungle with some Negro men sitting on a log by the camp fire. I remained at the railroad until they later spied me and they came back to the railroad. I asked them what they were doing over there with the Negroes and they said they went over there to warm. They said those boys used bad language with them and told me I should go over and whip those Negroes. I went down to those Negroes, there were some of them scattering through the jungles. I went down to one fellow that remained by the fire and asked him what he said to the girls and he said he didn't say anything to them, he said he lived up on the hill and was down there looking for his pigs. I came back to the railroad where the girls were. In a few minutes Gilley came back with some food and we ate the food. Later we went up to the railroad yards to board this train back to Huntsville, Alabama, and later in the morning we boarded the train.

The following, is, in substance, the testimony given by George W. Chamlee, at the aforesaid trial of Haywood Patterson in April, 1933:

I am a resident of Chattanooga and an attorney for forty years in the State of Tennessee. My office is located on 7th Street at Market and Broad Streets. My office or residence has been on 7th Street twenty-five years out of the last forty years. 7th Street consists of about eight blocks. I do not know all the people living on 7th Street but I know almost everybody there. I have never known any person by the name of Callie Brochie living or having a boarding house there. I have examined the city directories for the years 1930, 1931 and 1932 to see if I could find a Callie Brochie in Chattanooga and I went from one end of 7th Street to the other searching for a Callie Brochie but couldn't find her. I do not believe such a person has lived in Chattanooga for forty years. 7th Street is about a mile and a half from the edge of a hobo jungle on an air line. Going by way of streets and blocks, it is approximately two miles to the center of the jungle and the water tank of the Southern Railroad from 7th and Market Streets. The nearest mill to the jungles, excepting the Champion Mill is about one and one-half miles from the jungle. I have passed by the jungles at night and I have seen fires burning there, camp fires, and white and Negro hoboes.

The following, in substance, is the testimony given by Beatrice Maddox at the aforesaid trial of Haywood Patterson, in April, 1933.

I live in Chattanooga, Tennessee. I was born there and lived there all my life. I am aquainted with 7th Street in the City of Chattanooga. 7th Street starts at the court house and runs to the other side of Pine Street. It is about eight or nine blocks. I do not know any Mrs. Callie

Brochie that lives on 7th Street or ever has lived on 7th Street. There is no boarding house run by Callie Brochie on 7th Street. I have looked through the city directory of Chattanooga, examined it carefully and there is no mention of Callie Brochie or any boarding house lady by the name of Callie Brochie. I am related to Roy Wright and Andy Wright, two of the defendants.

The following, in substance, is the testimony given by Dallas Ramsey at the aforesaid trial of Haywood Patterson in April, 1933.

About two years ago this month (March, 1931) I remember reading in the papers in Chattanooga about some trouble between some colored boys and white girls down around Scottsboro. I was living right at the railroad in Chattanooga, Tennessee, about three hundred yards from the railroad tracks on Central Avenue. I have lived there nine years in the same house. The tank on the railroad tracks is a short distance from my house. That whole area is known as Hobo Jungle. Lewis also lived in a little shack in Hobo Jungle. The day before I read about the affair in the papers I saw two white girls in the jungles about six o'clock in the morning (Victoria price is brought in for identification). She is the same girl I saw, I recognize her. The night before I saw the girls I saw Lewis. I met him again in the morning at his house. We left his house together and went down to his hog pen about two hundred yards away. Lewis had a sick hog, I saw it. Then Lewis and I came up on the Central of Georgia Trestle. I saw the two girls, one of them was Victoria Price. She asked me when does the train for Huntsville leave. I replied somewhere around nine o'clock. Victoria Price said she came up here hunting a job and I told her they were hiring knitters at the

Champion Hosiery Mill, and she said she had been all around town and could not find a job. That was at six o'clock in the morning. She told me her old man had just left her and gone hunting for food and she was going to hobo back to Huntsville. I told her it was a pretty hard way for a woman to travel. She said they didn't have any money. I seen the girls again a little after that. They was going up toward where the Central and Southern crosses. I saw a man with them. I seen them all catch the train there, two girls and a crew of white and colored boys.

The following, in substance, is the testimony given by E. L. Lewis at the aforesaid trial of Haywood Patterson in April, 1933.

I live in Chattanooga, Tennessee, since 1922. I live in a house near the railroads close to the junction of the Southern Boulevard and Central Railroad of Georgia. I know Dallas Ramsey. I live about three or four hundred yards from him. I own some hogs. I keep them in the woods. On the morning of March 25, 1931 I had an engagement with Dallas Ramsey. He came to my house and he and I went down to see the pigs. I had a sick hog outside the pen. On my way, either going or coming, I saw two women. There was a fire around there. On the night before I saw a fire burn in this woodland about ten o'clock. Victoria Price was dressed in overalls and a long coat. Before that she had been in the woods with some men, white and colored. I saw Victoria Price about four months ago begging food (Victoria Price is brought in and Lewis identifies her). Victoria Price was a frequent visitor to the jungles. When I was returning with Ramsey she asked him when the train left going toward Huntsville, he said about nine o'clock. After I returned from looking about the hogs I seen two

girls sitting on a log between two colored boys. Then they went down to the track of the Central of Georgia and met a white man. Then the young white man came running to me and says what did you do to those girls and I said I haven't said anything to the girls, the girls only asked Ramsey could they get a freight train.

Your deponent was present in court when Honorable Judge W. W. Callahan delivered his charge to the jury at the end of the case of Haywood Patterson, and heard the entire charge delivered. I have read the charge as it appears in the official transcript of said charge at pages 515 to 536, both inclusive. The said transcript shows the said charge as one continuous and broken oration. Your deponent avers that this was not the case. What actually happened was that the court actually ended his charge in the first instance with the words, "Take this case, gentlemen, and give it your consideration", appearing in the official transcript on page 535 at lines 5 and 6. Thereupon it immediately became apparent to counsel for the defense that the court had omitted to charge the jury concerning a possible verdict of not guilty, and the form which said verdict should take should they find the defendant not guilty. Mr. Leibowitz, chief of counsel for the defense, thereupon walked up to the Judge's bench and advised the court of such omission. Thereupon after a consultation between the court, Mr. Leibowitz, and the Honorable Thomas K. Knight, Jr., the court proceeded to charge the jury on a possible finding by the jury of a verdict of not guilty, and the form which said verdict should take. The point at which the court recommenced its charge appears in the official transcript at page 535 at line 6, beginning with the words "Gentlemen of the jury".

Your deponent was also in court during and heard the whole of the summation of Honorable Thomas E. Knight, Attorney General of the State of Alabama, made

before the jury at the end of the Patterson case. That at one point of his summation, the Attorney General said, in effect, "If you cannot avenge the assault of Victoria Price, then you cannot stop the attacks on our womanhood," and further words of a similar nature. Thereupon Mr. Leibowitz, chief of counsel for the defense, moved for a mistrial on the ground that the statements of the Attorney General were an appeal to passion and prejudice. The court overruled this motion. The colloquy occurring around this incident is incompletely reported in the official transcript of the said trial at page 514, lines 8 to 22, both inclusive. Just as Mr. Leibowitz had noted an exception to the denial of his motion (line 14), Attorney General Knight, with obvious excitement, said as closely as I can remember, "Yes, it is an appeal to passion and prejudice." After this there was a mementary silence and then Attorney General Knight continued, "We all have a passion for protecting our womanhood." Then followed the statement of Mr. Leibowitz at line 15 that, "He has repeated a (*the*) statement and we object to it."

In the Brief for Defendants on Constitutional questions submitted with the defendants' motion for a new trial, reference (*is made*) to certain pages of the official record of the original motion to quash the indictment made before Judge Horton in April, 1933, in the cause of the *State of Alabama* v. *Haywood Patterson, et al.*, defendants, because the official transcript of the motion to quash the indictment heard before Honorable Judge W. W. Callahan in November, 1933, did not incorporate these pages of the original motion. At the hearing before Judge Horton, Mr. Chamlee stated that he had excused Judge Mooney from appearing personally with the jury roll because he had promised to produce the book. When it became evident that the jury roll had not been produced, Mr. Leibowitz asked for a subpoena for its production. Mr. Knight objected to this on the ground that the jury roll was immaterial because even if all the

names on it were shown to be white, it would make no difference as the issue was not what names were on the jury roll, but whether the exclusion was due to discrimination. Mr. Knight also stated on that occasion that he himself did not know whether the names of Negroes appeared on the jury roll. In addition to my recollection of what occurred at that time, I have checked these statements with the official transcript before Judge Horton.

In the Norris case an adjournment was granted by the court to the state in order to obtain the testimony of Luther Morris, a witness on behalf of the state, who had failed to appear on a subpoena at the opening of the trial of Clarence Norris. The statements, conversations and other incidents hereinafter referred to, relating to this question of adjournment at the request of the state to procure the appearance of Luther Morris do not appear in the official transcript of the cause of State of Alabama vs. Clarence Norris. I was present in court and heard and witnessed the conversations and incidents hereinafter referred to relating to the said matter of the adjournment and I set them forth as follows:

At 8:30 o'clock in the morning of Saturday, December 2, the court called the case of People of the State of Alabama vs. Clarence Norris and inquired, "what says the state?" Attorney General Knight stated that the state was ready if the witnesses subpoenaed by the state were in court; the court thereupon directed the clerk to call out the names of the witnesses subpoenaed to indicate their presence.

It appeared upon the reading that all of the witnesses were present except one Luther Morris who had previously testified on behalf of the state at the Patterson trial. Thereupon Attorney General Knight stated that the state was ready except for a witness Luther Morris and asked for an adjournment until the following Monday at which time he felt sure said witness would be present in court, to afford an opportunity for such

witness to be brought to court. The court inquired of the defense concerning the motion and Mr. Leibowitz thereupon announced that the defense was ready and that he opposed the adjournment requested by the state.

Mr. Leibowitz stated that in order not to hold up the trial he was willing to stipulate that if the state would proceed the testimony of said Luther Morris taken at the Patterson trial could be read in the Norris case if the state had completed its case and Luther Morris had not appeared. Mr. Leibowitz made it clear that he was offering this stipulation only if the state would agree to it at that time and proceed to trial, but that if the state would not agree to proceed, that he could not offer such stipulation.

Mr. Knight refused to enter into such a stipulation. The court thereupon said, "Let's go on and I will pass on the question of the absence of the witness if need be later since he may arrive during the course of the day."

About 2:30 in the afternoon, the state announced that it had completed its case except that it wanted an adjournment for the purpose of producing the said Luther Morris who had not appeared. The state advised the court that it had heard that the said Luther Morris was ill, although in response to a question from the court, the state said that it had no definite information nor did it offer a doctor's certificate in evidence.

The defense opposed an adjournment; it called to the attention of the court that on the previous Wednesday (the day before Thanksgiving Day, which was a holiday generally observed throughout the courts of the south and the courts of the country), a request for an adjournment applied for by the defense in order to enable Dr. E. E. Reisman of Chattanooga to reach the courthouse towards which he was hastening as speedily as he could from Chattanooga which he had left at twelve o'clock noon, had been denied. That

a further request made by the defense at that time in the Patterson case for an adjournment until the following morning to await the arrival of the deposition of Ruby Bates, a material and important witness for the defense, had likewise been denied although Mr. Leibowitz pointed out that the court had received a telegram that said deposition had been airmailed and that Mr. Leibowitz was willing to stipulate that if the deposition did not arrive in the mail the following day, he would be willing to rest without any further delay.

Thereupon the court admonished Mr. Leibowitz to the effect that what happened in the prior trial had no bearing on this trial, and that as a matter of fact, upon the opening of the Norris case, the state had made known the absence of its witness Luther Morris. Mr. Leibowitz then pointed out that the exact situation applied to the Patterson case, i. e., that at the opening of that case the court was advised that the defense was ready except for the Ruby Bates deposition and stated that it was willing either to await said deposition before starting trial or might be compelled to ask for an adjournment during the course of the trial if the deposition had not yet arrived at the time the defense completed its case. Again the court admonished that what happened at the prior trial could not effect the present situation, and over defendant's objection, adjourned the trial until Monday morning.

ELIAS M. SCHWARZBART.

Sworn to before me this
20th day of February, 1934.

FAY SIEGARTEL,
Notary Public.

A copy of the foregoing affidavit was served on the Attorney General of the State of Alabama by mail on February 20, 1934 and retained by him without objection.

On February 24, 1934 the state filed the following motion in open court:

(Caption)

Comes the State of Alabama, plaintiff in the above styled cause, and moves this Honorable Court to strike the defendant's motion for a new trial or that which purports to be a motion for a new trial and all amendments thereto and for grounds of said motion to strike says as follows:

That this Court no longer has jurisdiction, power or authority over the judgment rendered in this cause on the 6 day of December, 1933. The defendant was tried, convicted and sentenced during the 1933 fall term of the Circuit Court of Morgan County, Alabama which term of Court ended by operation of law on the 23d day of December, 1933. That the defendant did not file any motion for a new trial or in arrest of judgment until after the expiration of said term of court, to-wit on the 29th day of December at which time this Court had lost jurisdiction over said judgment.

Respectfully submitted,

THOMAS E. KNIGHT, JR.,
Attorney General.

THOS. SEAY LAWSON,
Assistant Attorney General.

On February 24, 1934 the Court granted the State's motion to strike defendant's motion for a new trial and refused to hear the same upon the merits. To this action defendant's counsel excepted.

And the defendant, Haywood Patterson, here now tenders the foregoing as his true and lawful Bill of Exceptions, and prays that the same may be signed and certified to the Supreme Court of the State of Alabama, that the errors complained of may be reviewed and corrected; which is accordingly done this, the 2 day of May, 1934.

W. W. CALLAHAN,
Judge Circuit Court, Presiding.

I hereby certify that I have this day handed to Wade Wright, of counsel for the State of Alabama, a copy of the foregoing Bill of Exceptions.

Dated, Decatur, March 5th, 1934.

ELIAS M. SCHWARTZBART,
Of Counsel for Defendant.

Presented to me this, the 5th day of March, 1934.

W. W. CALLAHAN,
Judge Circuit Court, Presiding.

Certificate of Appeal.

HAYWOOD PATTERSON, APPELLANT,
vs.
STATE OF ALABAMA, APPELLEE.

I, J. H. Green, Clerk of the Circuit Court of Morgan County, Alabama, do hereby certify that in the above styled cause, which was tried and determined in the said Morgan County Circuit Court, on the 1st day of December, 1933, the defendant was convicted of the offense of rape and his punishment fixed at death by electrocution.

CERTIFICATE OF APPEAL

I further certify that on December 6, 1933, defendant was sentenced to death by electrocution and that Friday, February 2, 1934 was set for the execution of such sentence. The defendant on December 6, 1933, gave notice of an appeal to the Supreme Court of Alabama and asked that sentence be suspended pending said appeal, which was granted.

Witness my hand and the seal of said court, this the 9 day of May, 1934.

.....
Clerk.

Certificate of Transcript.

STATE OF ALABAMA,
MORGAN COUNTY. } CIRCUIT COURT.

CERTIFICATE OF TRANSCRIPT

I, J. H. Green, Clerk of the Circuit Court of Morgan County, Alabama, hereby certify that the foregoing pages numbered one to , both inclusive, contain a true and correct copy of the record and proceedings in a cause pending in said court, wherein the State of Alabama was plaintiff and Haywood Patterson was defendant as the same appears on file and of record in my office.

Witness my hand and the seal of said court this the 9 day of May, 1934.

.....
Clerk.

[fol. 788] Jun. 28, 1934.

The State of Alabama, Judicial Department

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1933-34

8 Div. 581

HAYWOOD PATTERSON

v.

STATE OF ALABAMA

Appeal from Morgan Circuit Court

BOULDIN, J.:

Appellant, Haywood Patterson, was convicted of the offense of rape, and his punishment fixed at death.

The cause was before us on former appeal, Patterson v. State, 224 Ala. 531.

Other decisions on appeals by defendants jointly indicted with this appellant are Weems et al. v. State, 224 Ala. 524, and Powell et al. v. State, 224 Ala. 540.

[fol. 789] The judgments of affirmance in this court were reversed for denial of the right of counsel, or inadequate provision for counsel, to represent the defendants in the trial court. Powell et als. v. Alabama, 287 U. S. 45.

We have now under submission, being considered along with this cause, the appeal of Clarence Norris v. State of Alabama, 8 Div. 582, from a conviction under the same indictment.

In this cause, Patterson v. State, the State submits a motion to strike the bill of exceptions because not presented within the time required by law.

The minutes show the verdict returned and judgment of conviction thereon on December 1st, 1933, and sentence pronounced on December 6th, 1933.

The time for presenting bills of exceptions runs from the date of the judgment of guilty, not from the date of sentence. Lewis v. The State, 194 Ala. 1.

The bill of exceptions was presented March 5th, 1934, the 94th day. This was too late unless the time was extended by the intervention of a motion for new trial.

Code, §6433 provides:

"Bills of exceptions may be presented to the judge or clerk at any time within ninety days from the day on which the judgment is entered, and not afterwards. • • • Presentation of the bill of exceptions within ninety days after the granting or refusing of a motion for a new trial shall be sufficient to preserve for review the rulings of the trial court on the trial of the original cause, as well as the ruling of the court on the motion for a new trial."

[fol. 790] A motion for new trial was filed December 29th, 1933, which was afterwards stricken by the trial court on the ground that it was filed after the term of the court had expired, that thereby the judgment had become final, and the court was without jurisdiction to entertain, hear and pass upon a motion for new trial.

This ruling was in accord with Norris v. Corona Coal Co., 215 Ala. 47, a case in which this question was directly presented.

The judgment in that case had been rendered on December 19th, 1924, motion for new trial presented on December 27th, 1924, and duly passed to January 5th, 1925, when it was taken under advisement and passed to January 12th, 1925. The trial court held that objection to action on the motion was well taken, that being filed after the end of the term, the court was without jurisdiction to hear it, that the motion was null and void, and must be stricken. In approving such ruling, this court said:

"The statute provides that after the lapse of 30 days from the date on which the judgment or decree was rendered the court shall lose all power over it as completely as if the end of the term had been on that day; and, we add, unless the motion therefor was filed, called to the attention of, and passed by, the court before the adjournment of the term, and before the finality of the judgment or decree as provided by the statute after a lapse of 30 days from the date of its rendition. The provision of the statute for the lapse of 30 days as to such motions did not extend the term of the court as fixed by law, though the 30 days from rendition of a valid judgment or decree had not expired." Norris v. Corona Coal Co., 215 Ala. 47 [49].

[fol. 791] The governing statutes there construed were Code, §§6667, 6670. Both these statutes are codified from the Act of 1915, page 707, Sections 1 and 3.

Prior thereto all motions for new trials were required to be made within the terms under general well known rules of law. The Act of 1915 contemplated open courts for most of the year, but as to cases at law, terms were not abolished.

The terms run from the first Monday in January each year to the last Saturday in June, and from the first Monday after the fourth of July to and including the last Saturday before Christmas day of every year.

The thirty day statute making judgments final after thirty days, was restrictive of the rule theretofore obtaining whereby the cause was considered in fieri, and judgments within the breast of the court, until the end of the term.

The effect of the Norris case, supra, is to hold the thirty day statute, not to abrogate the established rule that all judgments become final with the end of the term, not to extend the thirty day period beyond the end of the term.

This ruling was not new, but in keeping with former decisions through a long period of years.

Thus, in Mt. Vernon Woodbury Mills v. Judges of Fifteenth Circuit, 200 Ala. 168 it was pointed out that this thirty day statute was copied from prior local statutes applicable to Jefferson County (Acts 1888-9, page 992, Section 20).

[fol. 792] In Southern Railway Co. v. Griffith, 177 Ala. 364 [365], this section 20 is copied, and the court quoted and followed Ex parte Highland Avenue & Belt Railroad Company, 105 Ala. 221, saying:

"* * * 'in order to give it (the motion) vitality at a subsequent term, and give the court power then to act on it, it must affirmatively appear from the record in the cause that the motion was made and called to the attention of the court, and continued during the term at which the judgment was rendered; otherwise the court is ever afterwards without power to entertain it.'"

In many other cases the same principle is recognized.

By long recognized rules, if a motion for new trial was made within the term, and was not acted upon, or con-

tinued by special order made during the term, the court lost power to act upon it at a subsequent term.

The same rule has been uniformly applied to motions made within the thirty day period and during the term. In other words, the effect of the end of the term on the finality of judgments, and, therefore, on motions for new trial, is the same now as before the statute of 1915.—Childers v. Samoset Cotton Mills, 213 Ala. 292; Mt. Vernon Woodbury Mills v. Judges of Fifteenth Circuit, supra.

We must, therefore, hold the motion for new trial in this case was functus; the judgment had become final; the motion could not invoke the jurisdiction of the trial court; it could not be entertained; no order of continuance to a future day could give it vitality.

[fol. 793] The trial court had no discretion in the matter. He could not do other than disregard the motion or strike it.

The case is wholly different from those involving a waiver of a discontinuance of a motion duly made, wherein the jurisdiction of the court has attached, such as Greer et al. v. Heyer, 216 Ala. 229.

The proviso of Code, §6433, giving ninety days after the granting or refusing of a motion for new trial, obviously means a motion for new trial which invokes the jurisdiction of the court to grant or deny it; postpones the finality of the judgment. The same proviso looks to incorporation of the ruling on the motion in the bill of exceptions for review along with rulings on the main trial.

This ninety day extension can have no application to a case like this in which there was no motion for new trial before the judgment became final, where the document filed as a motion was functus from the beginnnig for want of jurisdiction to hear it. To hold otherwise would be to say the motion was abortive for all the purposes of such motion, but effective for the purpose of extending the time for a bill of exceptions. Such ruling would invite the filing of such a motion merely to extend the time for presenting a bill of exceptions, and virtually abrogate the statute.

We must, therefore, hold the time for presenting a bill of exceptions in this case was within ninety days from the judgment, just as though no motion for a new trial had been filed.

[fol. 794] Does it follow that the bill of exceptions must be stricken on motion of the State?

"The appellate court may strike a bill of exceptions from the record or file because not presented or signed within the time required by law, but shall not do so ex more motu, but only on motion of a party to the record or his attorney; the object and effect of this statute being to allow parties to waive or consent for the time of signing bills of exceptions." Code, §6434 (3020).

This statute has also been construed in the light of its history and relation to former statutes.

In Ettore v. State, 214 Ala. 99, an appeal in a criminal case wherein the appellant was convicted of murder, it was sought to excuse presentment within time because of waiver or consent on the part of the solicitor. In the first part of the opinion the court held such consent unavailing because given after the time for presentment had expired.

But the court further proceeds, very definitely, because of the importance of the question, to construe and declare the real meaning of the statute.

The entire discussion should be read, but we here quote the concluding portion of the opinion as follows:

"The waiver or consent therein mentioned we construe to mean such as is indicated by a failure to move to strike upon submission of the cause on appeal, just as had been the rule established as to signing bills of exceptions, under section 3020 of the Code of 1907. Under the statute as it now reads, the question of the time of presentation is also included within its operation.

"We entertain the view, therefore, that the added clause was intended merely as declaratory of the purpose and effect of the statute, as it had previously existed and been construed as to signing bills of exceptions, and not as making any change in the law as to the time within which bills of exceptions are to be signed and presented.

[fol. 795] "It results that the motion of the state to strike the bill of exceptions must be sustained." Ettore v. State, 214 Ala. 99 [100].

See, also, Beatty et al. v. McMillan, 226 Ala. 405; Battle v. Wright et al., 217 Ala. 354; Macertney v. Gwin, 218 Ala. 529.

The rule as to signing a bill of exceptions under §3020, Code of 1907, thus declared applicable to presentation under §6434, Code of 1923, was stated in Ex parte Hill, 205 Ala. 631, as follows:

"Section 3019 of the Code is mandatory in its requirement that bills of exceptions must, if correct, be signed by the trial judge within 90 days after the date of presentation; and bills not so signed must be stricken on proper and seasonable motion. Baker v. C. of G. Ry. Co., 165 Ala. 466, 51 South. 796; Buck Creek Lbr. Co. v. Nelson, 188 Ala. 243, 66 South. 476; Deason v. Gray, 189 Ala. 672, 66 South. 646; Sellers v. Dickert, 194 Ala. 661, 69 South. 604; T. C. I. & R. R. Co. v. Perry, 10 Ala. App. 371, 65 South. 91.

"Section 3020 of the Code is restrictive, and not enabling, and its only purpose and effect is to prevent the appellate court from striking bills not signed within the time prescribed by law, ex mero motu, as was formerly the practice. It does not change the mandatory character of the provisions of section 3019, nor arm the appellate court with any discretion with respect to the granting of a motion properly made and seasonably invoking the mandatory rule of the statute. Baker v. C. of G. Ry. Co., 165 Ala. 466, 469, 61 South. 796; Box v. So. Ry. Co., 184 Ala. 598, 600, 64 South. 69."

By reference to Baker v. Central of Georgia Railway Co., 165 Ala. 466 [468], will be found a long line of cases, civil and criminal, uniformly holding in line with Ex parte Hill, supra.

The statutes were intended to bring litigation to an end, to remedy some of the evils of the law's delay, and we are unwilling to depart from settled construction.

While we do not question the bona fide intention in this instance to conform to our laws touching motions for new trial and presentation of bills of exceptions, we must follow the [fol. 796] long established rules in this regard, and, therefore, hold the bill of exceptions in this cause, on motion of the State, must be, and is stricken.

All questions reviewable alone by bill of exceptions must, therefore, be disregarded.

No error appearing in the record as thus presented, the judgment of the court below must be and is affirmed.

The day fixed for the execution of the sentence of law having expired, it is ordered that Friday, the 31st day of August, 1934, be set for the execution of the death sentence according to aw.

Affirmed.

All the Justices concur.

[fol. 797] Filed in Office of Clerk, Supreme Court, April 11, 1934

SUPREME COURT OF THE STATE OF ALABAMA

8th Div. 581 and 582

STATE OF ALABAMA, Prosecutor,

against

HAYWOOD PATTERSON, Defendant

STATE OF ALABAMA, Prosecutor,

against

CLARENCE NORRIS, Defendant

On reading and filing the petition of Joseph R. Brodsky, duly verified April 7, 1934, and sufficient cause appearing therefor, it is hereby

Ordered that the Clerk of the Morgan County Circuit Court send up to this Court for its inspection and consideration in connection with the transcripts herein the two books consisting of the jury roll of Jackson County which are in evidence in these cases.

Dated Montgomery, Alabama, May 4, 1934.

(Signed) John C. Anderson, Chief Justice of the Supreme Court of the State of Alabama, for the Court.

[fol. 798] SUPREME COURT OF THE STATE OF ALABAMA

STATE OF ALABAMA, Prosecutor,

against

HAYWOOD PATTERSON, Defendant

STATE OF ALABAMA, Prosecutor,

against

CLARENCE NORRIS, Defendant

To the Supreme Court of Alabama:

The petition of Joseph R. Brodsky respectfully alleges as follows:

1. Your petitioner is one of the attorneys for the above named defendants who were tried separately before Honorable W. W. Callahan and a jury in Morgan County and have been convicted of the crime of rape and sentenced to death.

2. In each case an identical motion was made to quash the indictments rendered by the grand jury of Jackson County against these defendants on the ground that the indictments were in violation of the rights of defendants under the Fourteenth Amendment of the United States Constitution in that defendants were Negroes and that Negroes had been systematically excluded from the jury [fol. 799] roll of Jackson County and that such exclusion was due to their race.

3. In support of this motion proof was offered by the defendants to show that in fact there were no Negroes on the jury roll from which was selected the grand jury which found the indictments in question. As part of such proof the jury rolls of Jackson County were produced in Court and offered in evidence.

4. Upon the hearing of the motion it appeared that the names of Six Negroes were on such jury rolls. A question arose, however, whether such names had been placed on the jury rolls prior to or subsequent to the finding of the indictments. Defendants proved by unimpeached and un-

contradicted expert testimony that the names of these six Negroes had been written over certain red lines appearing immediately thereunder. These red lines were concededly written on the books subsequent to the finding of the indictments when a new jury board took possession of the books. The Court nevertheless refused to find that the names of the Negroes had been placed upon the rolls subsequent to the bringing in of the indictments and denied the motions to quash the indictments.

5. These jury books were at the request of defendants' counsel impounded with the Clerk of the Morgan County Circuit Court and are, to the best of my information and belief, still in his possession.

6. It is important to the consideration of the appeal of the defendants that these jury rolls, which consist of two bound books, be produced before this Court so that the members of this Court may personally be able to examine [fol. 800] the same. In my opinion the case of the defendants would be seriously prejudiced if such jury rolls were not before the Court at the time of the argument and consideration of these cases.

7. It is impracticable to attach or incorporate these books in the transcript or to furnish the Court with any summary or photograph of the same. An examination of the actual writing itself is essential.

Wherefore your petitioner respectfully asks that this Court direct the Clerk of the Circuit Court of Morgan County to send up for the inspection and consideration of this Court in connection with the transcripts herein the two books consisting of the jury roll of Jackson County which are in evidence in these cases.

Dated New York, April 7th, 1934.

(Signed) Joseph R. Brodsky, Petitioner.

STATE OF NEW YORK,
County of New York, ss:

Joseph R. Brodsky makes oath in due form of law that he is one of the attorneys for the defendants herein and is the petitioner herein. The facts as stated in the foregoing petition are due to the best of his knowledge and belief.

(Signed) Joseph R. Brodsky.

Subscribed and sworn to before me, this 7th day of April, 1934. (Signed) Charles H. Levitt, Notary Public, New York County. N. Y. Co. Clks. No. 119, Reg. No. 5L221. Kings Co. Clks. No. 45, Reg. No. 5223. Bronx Co. Clks. No. 32, Reg. No. 119L35. Commission expires March 30, 1935.

[fol. 801] THE SUPREME COURT

Friday, May 4th, 1934.

The Court met pursuant to adjournment.

Present: All the Justices.

It is ordered on motion of the appellants that the Clerk of the Circuit Court of Morgan County, Alabama be directed to forward to this Court for inspection, the two books consisting of the jury rolls of Jackson County introduced in evidence in the trials of the cases of Haywood Patterson vs. The State of Alabama and Clarence Norris vs. The State of Alabama in the Circuit Court of Morgan County, Alabama and now on appeal to this Court from the Circuit Court of Morgan County, Alabama.

[fol. 802] Filed in Office of Clerk, Supreme Court, May 25, 1934

8th Div. 581

HAYWOOD PATTERSON, Appellant,

vs.

THE STATE OF ALABAMA, Appellee

Comes the State of Alabama, appellee in the above styled cause and moves this Honorable Court to strike from the record or transcript that which purports to be a bill of exceptions and sets down as grounds for said motion the following:

1. That said bill of exceptions or purported bill of exceptions, was not filed with the trial judge within ninety

days after the pronouncement of judgment by the trial court, as is required by Section 6433, Code of Alabama, 1923.

2. That that which purported to be a motion for a new trial was not filed until after the expiration of the term of court at which the defendant was convicted and that therefore the trial court had lost any and all power or control which it might have had over said judgment of conviction and that the statutory period of ninety days therefore began to run from the date of the judgment on to-wit, December 1, 1933 and that the bill of exceptions was not presented to the trial judge until March 5, 1934, which was more than ninety days after the date on which the judgment was pronounced.

(Signed) Thomas E. Knight, Jr., Attorney General.
(Signed) Thos. Seay Lawson, Asst. Atty. General.

We hereby certify that we have on this day served a copy of the foregoing on attorneys for appellant. May 25th, 1934.

(Signed) Thos. Seay Lawson, Asst. Atty. General.

Friday, May 25, 1934.

[fol. 803] SUPREME COURT

The Court met pursuant to adjournment.
Present: All the Justices.

MORGAN CIRCUIT COURT

8th Div. 581

HAYWOOD PATTERSON

vs.

THE STATE OF ALABAMA

Come the parties by attorneys and argue and submit this cause on the motion to strike the bill of exceptions and on the merits for decision.

[fol. 804] SUPREME COURT

Thursday, June 28, 1934.

The Court met pursuant to adjournment.
Present: All the Justices.

MORGAN CIRCUIT COURT

8th Div. 581

HAYWOOD PATTERSON

vs.

THE STATE OF ALABAMA

Come the parties by attorneys and the motion to strike the bill of exceptions and the record and matters therein assigned for errors being argued and submitted and duly examined and understood by the Court, it is considered that the motion to strike the Bill of Exceptions be granted, and the said Bill of Exceptions be and the same is hereby stricken. The Bill of Exceptions being stricken, in the record and proceedings of the Circuit Court there is no error.

It is therefore considered that the judgment of the Circuit Court be in all things affirmed.

The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoner, Haywood Patterson, having expired pending this appeal, it is ordered that the Sheriff of Morgan County deliver the prisoner, Haywood Patterson, to the Warden of Kilby Prison, at Montgomery, Alabama, and that the said Warden of Kilby Prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday, August 31st, 1934, before the hour of sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death, to pass through the body of the said Haywood Patterson until he is dead, and in so doing he will follow the rules prescribed by the Statutes.

It is also considered that the appellant pay the costs of appeal of this Court and of the Circuit Court.

[fol. 805] Filed in Office of Clerk, Supreme Court, July 9, 1934

The State of Alabama, Judicial Department

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1933-34

8 Div. 581

HAYWOOD PATTERSON

v.

STATE OF ALABAMA

Appeal from Morgan Circuit Court

PETITION FOR STAY OF EXECUTION

To the Honorable Chief Justice and Associate Justices of the Supreme Court for the State of Alabama:

Petitioner, Haywood Patterson, respectfully represents that on June 28, 1934 this Court announced its affirmance of the judgment of the Circuit Court of Morgan County of Alabama imposing the death penalty upon this petitioner and in its judgment fixed August 31, 1934 as the date of execution. Your petitioner has filed a petition for a re-hearing in this Court. In view of the fact that this Court is now in recess it may be that said petition may not have been decided by this Court prior to the date now set for the execution of said judgment. Moreover, your petitioner intends to apply to the Supreme Court of the United States for a writ of certiorari to review the decision of this Court in the event that said application for re-hearing is denied. Said Court is also in recess and will not re-convene until the early part of October 1934. It will, therefore, be impossible for your petitioner to have had his application passed upon by said Court prior to the date now fixed for such execution.

In connection with the application to the Supreme Court of the United States numerous steps will have to be taken including the certification by the Clerk of this Court of

the proceedings had before this Court and the printing of the transcript furnished by the Clerk of this Court by the Government printing office all of which must be complete before the writ of certiorari and the brief in support thereof can be prepared because of the necessity for proper [fol. 806] references therein. Moreover, said brief and petition will have to be printed.

The grounds upon which the Supreme Court of the United States will be asked to review this Court are as follows:

(a) That defendant's motion to quash the indictment was improperly denied because the defendant being a Negro unlawful discrimination was practiced against members of his race by excluding them from the jury roll from which was drawn the grand jury *jury* which found the indictment against him.

(b) That defendant's motion to quash the venire was improperly denied because the defendant being a Negro unlawful discrimination was practiced against members of his race by excluding them from the jury roll from which was drawn the petit jury which found him guilty.

(c) This Court in striking the bill of exceptions herein and affirming the judgment of conviction has deprived appellant of life and liberty without due process of law and has denied him the equal protection of the laws.

Your petitioner respectfully submits to this Court that a stay is necessary in order to give your petitioner an adequate opportunity to make application for certiorari by the Supreme Court of the United States and to give that Court an opportunity to pass upon such application. He respectfully prays that an order be made by this Court providing for a stay of execution such that your petitioner in the event that this Court denies his application for a re-hearing will have ample time after such denial to cause to be prepared the necessary papers for submission to the Supreme Court of the United States in connection with such application for certiorari and that the Supreme Court may have an opportunity of passing upon such application for writ of certiorari. In the judgment of your petitioner's counsel such stay should extend at least sixty days beyond the decision of this Court on the application for a re-hear-

ing and in any event extend at least to November 1, 1934, all of which is respectfully submitted.

[fol. 807] Haywood Patterson, by (Signed) Osmond K. Fraenkel, Attorney.

STATE OF NEW YORK,
County of New York, ss:

(Signed) Osmond K. Fraenkel.

Duly sworn to before me this 5th day of July, 1934. (Signed) Charles H. Levitt, Notary Public, New York County. N. Y. Co. Cl'k's No. 119, Reg. No. 5L221. Kings Co. Cl'k's No. 45, Reg. No. 5223. Bronx Co. Cl'k's No. 32, Reg. No. 119L35. Commission expires March 30, 1935.

I hereby certify that I have served a copy of this petition for stay of execution by mailing a true copy thereof in a securely fastened post-paid envelope addressed to Hon. Thomas E. Knight, Jr., Attorney General of the State of Alabama, representing appellee herein, to his office in Montgomery, Alabama, on the 6th day of July, 1934.

(Signed) Osmond K. Fraenkel, Attorney for Appellant.

[fol. 808] Filed in Office of Clerk, Supreme Court, July 9, 1934

The State of Alabama, Judicial Department

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1933-34

8th Div. 581

HAYWOOD PATTERSON

v.

STATE OF ALABAMA

Appeal from Morgan Circuit Court

APPLICATION FOR REHEARING

Comes the appellant, Haywood Patterson, and hereby makes application for a re-hearing of said cause and moves

the Court to set aside the judgment of affirmance rendered in this cause and to grant him a new trial, and that said cause be reversed and remanded to the Circuit Court of Morgan County for the causes and reasons hereinafter assigned in this application.

Dated New York, July 2, 1934.

Samuel S. Leibowitz, Joseph R. Brodsky, George W. Chamlee, Osmond K. Fraenkel, Attorneys for Aplant.

[fol. 809] The State of Alabama, Judicial Department

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1933-34

8th Div. 581

HAYWOOD PATTERSON

v.

STATE OF ALABAMA

Appeal from Morgan Circuit Court

Now comes the appellant, Haywood Patterson, in the above cause and presents this his application for a rehearing therein and prays the Court to set aside and vacate the judgment and opinion of affirmance rendered in said cause and to enter a judgment in favor of appellant reversing and remanding said cause and in support of his application for a re-hearing presents the following petition with brief and argument in support thereof:

I.

The Court erred in granting the application of appellee to strike the bill of exceptions herein and misconstrued appellant's argument in connection therewith

(a) in that the Court failed to consider the contention of applicant that appellee was estopped from contending that judgment had been rendered herein on December 1, 1933 by reason of appellee's statement in its notice of motion to strike the motion for a new trial herein that the judgment had been entered on December 6, 1933, a statement upon which appellant relied and reasonably had a

[fol. 810] right under the existing circumstances so to rely and because appellant suffered damage by so relying.

(b) In that the Court ruled that judgment had been entered on December 1st whereas the record entries indicate that judgment was entered on December 6th.

(c) In that the Court below should not have stricken the motion for a new trial because of the statement made by the Court to counsel for defendant that he had thirty days in which to file such motion for a new trial, a statement made in open Court in the presence of the representative of appellee.

And appellant urges upon the Court that by striking the bill of exceptions herein this Court has unlawfully and arbitrarily deprived appellant of his right of review and has thereby acted in violation of the Fourteenth Amendment to the Constitution of the United States in that it by so doing deprived this appellant of his life and liberty without due process of law and denied him of the equal protection of the laws.

II

The Court erred in not considering the exception reserved by appellant to the denial of the motion to quash the indictment as set forth in the record and as appears on page 15 of the transcript on the ground that unlawful discrimination was practiced by the officials of Jackson County in the selection of the jury roll from which was drawn the grand jury which indicted appellant and that the Court by refusing to consider said exception has unlawfully and arbitrarily deprived appellant of his right of review and has thereby acted in violation of the Fourteenth Amendment to the Constitution of the United States in that it by so doing deprived this appellant of his life and [fol. 811] liberty without due process of law and denied him of the equal protection of the laws.

III

The Court erred in not considering the exception reserved by appellant to the denial of the motion to quash the venire as set forth in the record and as appears on page 14 of the transcript on the ground that unlawful discrimination was practiced by the officials of Morgan County in the selection of the jury roll from which was drawn the

petit jury which tried appellant and that the Court by refusing to consider said exception has unlawfully and arbitrarily deprived appellant of his right of review and has thereby acted in violation of the Fourteenth Amendment to the Constitution of the United States in that it by so doing deprived this appellant of his life and liberty without due process of law and denied him of the equal protection of the laws.

IV

The Court erred in not considering the exception reserved by appellant to the denial of the motion for a change of venue as set forth in the record and as appears on page 13 of the transcript, and that the Court by refusing to consider said exception has unlawfully and arbitrarily deprived appellant of his right of review and has thereby acted in violation of the Fourteenth Amendment to the Constitution of the United States in that it by so doing deprived this appellant of his life and liberty without due process of law and denied him of the equal protection of the laws.

[fol. 812] V

The Court erred in not considering the various exceptions set forth in the bill of exceptions herein, as more particularly already argued in the brief filed by appellant upon the submission of this cause.

Dated, New York, July 2, 1934.

Samuel S. Leibowitz, Joseph R. Brodsky, George W. Chamlee, Osmond K. Fraenkel (Signed) Osmond K. Fraenkel, Attorney for Appellant.

I hereby certify that I have served a copy of this petition for re-hearing, together with the brief attached thereto, by mailing a true copy thereof in a securely fastened postpaid envelope addressed to Hon. Thomas E. Knight, Jr., Attorney General for the State of Alabama, representing appellee herein, to his office in Montgomery, Alabama, on the 6th day of July, 1934.

(Signed) Osmond K. Fraenkel, Attorney for Appellant.

[fol. 813] THE SUPREME COURT

Thursday, October 4th, 1934.

The Supreme Court met pursuant to adjournment. Present: All the Justices.

MORGAN CIRCUIT COURT

8th Div. 581

HAYWOOD PATTERSON

v.

THE STATE OF ALABAMA

Application for rehearing having been filed in this cause on the 9th day of July, 1934 and each and every ground of the petition being duly examined and understood by the Court, it is considered and ordered that each and all grounds of the petition for rehearing be and the same are hereby overruled; and the said application for rehearing be and the same is hereby overruled.

The time fixed by the judgment of affirmance and sentence of this Court rendered June 28, 1934, for the execution of the prisoner, Haywood Patterson having expired pending the determination of the application for rehearing in this cause, and the said application for rehearing being overruled, it is now ordered that Friday, the 7th day of December, 1934 be fixed as the date for the execution of the prisoner, Haywood Patterson.

It is therefore ordered that the Sheriff of Morgan County deliver the prisoner, Haywood Patterson to the Warden of Kilby Prison at Montgomery, Alabama, and that the said Warden of Kilby Prison at Montgomery, Alabama execute the judgment and sentence of the law on Friday the 7th day of December, 1934, before the hour of sunrise, on said day, in said prison, by causing a current of electricity of sufficient intensity to cause death, to pass through the body of the said Haywood Patterson until he is dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the appellant pay the costs of appeal of this Court and of the Circuit Court.

[fol. 814] IN THE SUPREME COURT OF ALABAMA

HAYWOOD PATTERSON, Appellant,

against

STATE OF ALABAMA

PRÆCIPE FOR TRANSCRIPT OF RECORD

To Robert F. Ligon, Esq., Clerk of the above entitled Court:

You are hereby required to make a transcript of the record of this cause to be used on an application to the Supreme Court of the United States for a writ of certiorari in said cause, the transcript to consist of:

1. The record of appeal in said cause, a copy of which we submit herewith.

2. The opinion of the Supreme Court of the State of Alabama, a copy of which we submit herewith.

3. All journal entries contained in the record of the proceedings of the Supreme Court of the State of Alabama relating to said cause.

4. The petition for a re-hearing, a copy of which we submit herewith.

5. The final judgment and decision of the Supreme Court of the State of Alabama, together with any opinion which may have been rendered on the application for re-hearing.

6. A copy of this praecipe, which is submitted herewith.

7. Your certification to the record that it is a complete record in said cause.

Dated, New York, October 4, 1934.

Osmond K. Fraenkel, Attorney for Appellant.

[fol. 815] The State of Alabama, Judicial Department

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1934-35

Eighth Division 581

HAYWOOD PATTERSON

v.

THE STATE OF ALABAMA

Appeal from Morgan Circuit Court

THE STATE OF ALABAMA,
City and County of Montgomery:

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered from 1 to 814, inclusive, contain a full, true and correct copy of the record and proceedings, and of the opinion of said Supreme Court in the above stated cause, as the same appear and remain of record and on file in *in* this office.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, in the City of Montgomery, this the 9th day of October, 1934.

Robert F. Ligon, Clerk of the Supreme Court of Alabama. (Seal of the Supreme Court of Alabama.)

[fol. 816] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI. Filed January 7, 1935.

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is assigned for argument immediately following No. 534.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

FILED
DEC 1 1934
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 554

HAYWOOD PATTERSON,
Petitioner,

against

STATE OF ALABAMA.

PETITION AND BRIEF IN SUPPORT OF APPLICATION FOR CERTIORARI.

WALTER H. POLLAK,
OSMOND K. FRAENKEL,
Attorneys for Petitioner.

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Supreme Court of the United States

OCTOBER TERM, 1934.

HAYWOOD PATTERSON,

Petitioner,

vs.

STATE OF ALABAMA.

PETITION FOR WRIT OF CERTIORARI.

TO THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Haywood Patterson, respectfully alleges:

A.

Summary statement of the matter involved.

Petitioner is now confined in Kilby Prison in the City of Montgomery, State of Alabama, under sentence of death for the alleged crime of rape. His execution is set for February 8, 1935. He was convicted at a trial held in Morgan County, Alabama, before Judge Callahan and a jury. An appeal was taken from that conviction to the Supreme Court of Alabama, which is the highest court of the State of Alabama. The conviction was affirmed by that Court on June 28, 1934. A timely application was made on July 9, 1934 for a rehearing, which application was received and considered by the Court. The application for a rehearing was denied on October 4, 1934.

At the outset of the case petitioner moved to quash the indictment on the ground that the grand jury which brought in the indictment in Jackson County had been drawn from jury rolls from which negroes had been excluded because of race or color. Petitioner also moved to quash the venire of the petit jury in Morgan County where the action had been brought on for trial on the ground that negroes had been excluded because of race or color from jury service in that county. The Court refused to permit petitioner to introduce evidence which petitioner deemed necessary to support the claim of exclusion.

B.

Reasons relied on for the allowance of the writ.

1. Petitioner was denied the equal protection of the laws guaranteed to him by the Fourteenth Amendment of the Constitution of the United States in that negroes were excluded from jury service in Jackson County, Alabama, in which county was found the indictment against him, and that such exclusion was by reason of their color.

A motion was made by petitioner before the commencement of the trial to quash the indictment on these grounds. The motion was entertained and evidence introduced in support thereof which established such discrimination. The claim of federal right was considered by the trial court.

2. Petitioner was denied the equal protection of the laws guaranteed to him by the Fourteenth Amendment of the Constitution of the United States in that negroes were excluded from jury service in Morgan County, Alabama, the county in which the case was tried, and that such exclusion was by reason of their color.

A motion was made by petitioner before the commencement of the trial to quash the venire on these grounds. The motion was entertained and evidence introduced in

support thereof which established such discrimination. The claim of federal right was considered by the trial court.

3. Petitioner was on numerous occasions, both with reference to the motion to quash the indictment and with reference to the motion to quash the venire, deprived of an opportunity of offering material proof in support of his contention that discrimination had been practiced.

The foregoing questions were expressly passed upon by the Supreme Court of Alabama upon an identical record in connection with the appeal of Clarence Norris, one of the negroes charged with participation in the same alleged crime. Petitioner's claims of federal constitutional right were overruled by the Supreme Court of Alabama or were unconstitutionally disregarded by that Court.

In support of the foregoing grounds of application your petitioner submits the accompanying brief setting forth in detail the precise facts and arguments applicable thereto.

WHEREFORE your petitioner prays that this Court, pursuant to United States Judicial Code, Section 237 b, as amended by Act of February 13, 1925, 43 Statutes 973, issue a writ of certiorari to review the judgment of the Supreme Court of the State of Alabama affirming your petitioner's conviction for rape, as aforesaid.

All of which is herewith respectfully submitted this 1st day of December, 1934.

HAYWOOD PATTERSON, Petitioner,
By WALTER H. POLLAK,
OSMOND K. FRAENKEL,
Attorneys.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1934.

HAYWOOD PATTERSON, *Petitioner,*

against

STATE OF ALABAMA.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of the Court below.

The opinion has not yet been reported officially. It appears in 156 So. 567 and at pages 788-794 of the record.* An application for rehearing was denied without opinion (806).

II.

Jurisdiction.

1.

The statutory provision is Judicial Code, § 237b as amended by Act of February 13, 1925, 43 Stat. 937.

*References, unless otherwise noted, are to the Patterson transcript of record. Since all questions raised upon this application with respect to negro exclusion are discussed in the companion petition for writ of certiorari and brief heretofore filed by Clarence Norris on November 17, 1934, Docket No. 534, they are not here repeated. It is accordingly suggested that the Norris petition and brief be read first.

2.

The date of the judgment is June 28, 1934 on which date the Alabama Supreme Court affirmed (799). A petition for rehearing was filed July 9, 1934 (802). The application was denied October 4, 1934 (806).

3.

The case comes within the provisions of §237b.

The claims of federal constitutional rights for the protection of which the jurisdiction of this Court is invoked are:

That the systematic exclusion of negroes because of race or color for service on grand and petit juries in Jackson County, where the grand jury was drawn (48-49), and in Morgan County, where the petit jury was drawn (423-424), was in violation of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States. Incidental to these claims is the further contention that the court erred in excluding evidence offered by petitioner to prove discrimination and exclusion.

The claims of denial of constitutional rights based upon negro exclusion were specifically raised in the motion to quash the indictment (49) and in the motion to quash the venire (424). The questions were expressly considered and the rights ruled against by the trial court (163, 495). Exceptions were noted to each ruling (167, 497). The record in the Patterson case was by stipulation made a part of the record in the Norris case. Both records therefore on the motions to quash the indictment and the venire are identical. In the Norris case the Supreme Court of Alabama expressly passed upon these questions and expressly overruled them in an opinion (Norris Record, 676-687). In the Patterson case the Alabama Supreme Court affirmed the conviction (793) but did not state whether it passed upon these questions.

4.

The following cases among others sustain the jurisdiction:

Strauder v. *West Virginia*, 100 U. S. 303, 309; *Neal* v. *Delaware*, 103 U. S. 370, 397. and *Rogers* v. *Alabama*, 192 U. S. 226, 231, establish that the exclusion of negroes from grand and petit juries solely on the ground of their race or color is in violation of the Constitution. *Carter* v. *Texas*, 177 U. S. 442, 448, 449, holds that the refusal to give the defendant a full opportunity to prove his claim of discrimination is a denial of the federal constitutional rights. *Beidler* v. *Tax Commission*, 282 U. S. 1, 8; *Fiske* v. *Kansas*, 274 U. S. 380, 385-6; *Creswill* v. *Knights of Pythias*, 225 U. S. 246, 261 and *Ancient Egyptian Order* v. *Michaux*, 279 U. S. 737, 745, decide that where a federal right has been asserted and denied, it is the province of this Court to ascertain whether the conclusion of the state court has adequate support in the evidence. *Carter* v. *Texas, supra*, lays down the principle that it is for this Court to determine whether the federal right has been properly called to the attention of the state court; and *Rogers* v. *Alabama*, 192 U. S. 226, 230, 231; *Ward* v. *Love County*, 253 U. S. 17, 22; *Davis* v. *Wechsler*, 263 U. S. 22, 24, 25; *Des Moines Navigation & R. R. Co.* v. *Iowa Homestead Co.*, 123 U. S. 552, show that this Court will not permit state courts to deny a federal right by the unfair application of local practice.

III.

Statement of the case.

Petitioner is one of the nine negroes referred to in the Norris petition and application for certiorari. Petitioner has had three trials and has been three times convicted. The first conviction was reversed by this Court (*Powell* v. *Alabama*, 287 U. S. 45). The second conviction was set aside by the trial judge, Horton, as against the

weight of the evidence (see opinion printed in the Appendix, p. 27). The third conviction, after trial before Judge Callahan, we seek here to review.

The motions to quash the indictment and the venire.

Petitioner made a motion to set aside the indictment and a motion to quash the venire before Judge Horton.* Petitioner renewed the motions before Judge Callahan upon the record before Judge Horton together with additional evidence. Judge Callahan denied both motions.

The proceedings in this—the Patterson—case were by stipulation made applicable to the defendant Norris (Norris Record, 42a). Accordingly, the identical papers with identical paging are printed in both records (44-167, 418-497).**

Patterson was found guilty on December 1, 1933. On the same day Norris' trial commenced. Norris was found guilty on December 6. On that day both men were sentenced. Motions for new trials were made (Patterson Record, 748-785; Norris Record, 643-673). Both motions were stricken by Judge Callahan on the application of the Attorney General (Patterson Record, 24-25; Norris Record, 24-25). In Patterson's case the bill of exceptions was also stricken.

The following are the facts concerning the striking of the motion and of the bill in Patterson's case.

The striking of the motion for a new trial.

Patterson, as we have just said, was found guilty on December 1. Immediately after the verdict, Patterson's counsel requested an extension of time beyond 30 days within which to file a motion for a new trial, stating that the transcript of testimony was necessary in order to prepare a proper

*Since Judge Horton set aside the conviction, his rulings on these motions never became subject to review.

**The details of these motions together with the page references appear in the brief on certiorari submitted by Clarence Norris, page 7, *et seq.*

motion and that he had been informed by the stenographer that the transcript would not be ready in less than a month (32). The court refused an extension beyond 30 days, saying in substance, "You have 30 days within which to make a motion for a new trial, and after you have made such motion within the 30-day period, you may then apply to me for a continuance for additional 30-day periods in order to file your amended motion based upon the transcript." This statement was made in the presence and hearing of the Attorney General of the State and of other counsel for the State (32-33), and the assertion of the court that the defendant's counsel had 30 days within which to file the motion was not objected to or commented upon (33).

Petitioner's counsel relied upon the statements of the court. The papers on the motion for a new trial were filed on December 29, within the 30 days allowed by the court. At the time the motion papers were filed, a copy was sent to the Attorney General (35-36). It was retained by him without objection. Because the transcript had not been received, continuances were requested and obtained for the purpose of filing an amended motion. The motion was continued to January 27 and, after an interchange of letters (35, 40-41), to February 24 (35, 42).* The attorneys for the State said nothing. They did nothing until February 24. On that date for the first time counsel for the state proposed a different theory,—proposed the theory that the defendant did *not* have "30 days within which to make a motion for a new trial"; and the trial court (in opposition to the declaration it had made at the time of verdict and inconsistently with its own action in granting continuances) sustained the theory thus propounded by the state.

On February 24, the Attorney General, reciting that the judgment against Patterson had been rendered on De-

*The court in the meantime made no suggestion that there was any doubt about the validity of the extension or the effectiveness of the continuances (see telegrams and letters, pp. 38-9, 40, 41, 42).

cember 6 (24) at a term which ended by operation of law on December 23, moved to strike the motion for a new trial because it was not filed until after the expiration of the term. The court granted the motion to strike the motion for a new trial (25). The defendant excepted (25). The defendant made application for a rehearing (26) upon papers setting forth the representations of the court, the acquiescence of the Attorney General in those representations and in the continuances granted by the court, and the reliance thereon by counsel (26-42). The application was considered and denied (43). Upon appeal the ruling striking out the motion for a new trial was affirmed (791).

The striking of the bill of exceptions.

In Alabama a bill of exceptions must be presented within (a) "90 days from the date on which the judgment is entered" or (b) "within 90 days after the granting or refusing of a motion for a new trial" (Code, Sec. 6433, Appendix, p. 19).

Had the motion for a new trial been entertained and denied on February 24, the time to file the bill of exceptions would have expired in May, 90 days later. Until February 24 defendant's counsel had no inkling that a motion to strike was to be made (36) although copies of the papers on the motion for a new trial had been served on the Attorney General nearly two months before.* With the motion for a new trial *not* entertained, the 90-day period for filing the bill of exceptions instead of expiring in May would run from the date of judgment and would expire on March 1 or March 6, depending on whether the judgment date is conceived to be December 1 or December 6.

Upon the question what is to be conceived as the true date of judgment the following are the relevant facts:

---

*The fact that the State allowed two months to pass before moving to strike out the motion for a new trial lulled the defendant's counsel into a mistaken sense of security concerning the time available for the preparation of the voluminous bill of exceptions.

The docket of December 1 does contain the words "ordered and adjudged" that "the defendant" is "hereby adjudged guilty as charged and that his punishment be fixed at death." But December 6—not December 1—was the day of sentence (*supra*, p. 7). And the docket of December 6 shows that on that day it was "ordered and adjudged" that the defendant "be and he is hereby sentenced to death by electrocution" • • • and that it was "further considered, ordered and adjudged by the Court" that the sheriff deliver up Patterson to the warden of Kilby Prison until the 2nd of February, and on that day he be electrocuted (19-20).

And the Attorney General—moving as we know on February 24 to strike the motion for a new trial—defined his contention in these words, "that this court no longer has jurisdiction, power or authority over the judgment rendered in this cause on the 6 day of December, 1933" (24).

The bill of exceptions was presented on March 5 (785), less than 90 days after December 6 but more than 90 days after December 1. The court received the bill and signed the bill,—on May 2 (785). The clerk certified the record on May. 9 (786-7). On the day of the argument of the two appeals—May 25 (Patterson Record, 798; Norris Record, 698)—the Attorney General moved to strike the bill of exceptions in the Patterson case on the ground that it was not filed until more than 90 days after the date of judgment. On *this* occasion the Attorney General declared the date of judgment to be December 1 (798).

On June 28 the Supreme Court of Alabama affirmed both judgments (Patterson Record, 788; Norris Record, 676). In its opinion in the Patterson case it upheld the striking of the motion for a new trial (789). It also said that the bill of exceptions in the Patterson case should be struck (791). The court accompanied these rulings with the statement that it did "not question the bona fide intention" of the petitioner "to conform to our laws touching motions for new trial and presentation of bills of exceptions" (793).

Patterson moved for a rehearing. His motion recited that the State was estopped from contending that the judgment had been rendered on December 1 and asserted that the striking out of the bill of exceptions was a violation of the defendant's constitutional rights. The motion reiterated his contentions that constitutional rights were denied by the overruling of the motions to quash the indictment and to quash the venire (804).

The Alabama Supreme Court entertained the motion. It considered "each and every ground" of the motion and denied the motion (806).

IV.

Errors below relied upon here. Summary of argument.

The Alabama courts denied petitioner's constitutional rights in refusing to quash for negro exclusion the indictment by the grand jury in Jackson County and the venire of the petit jury in Morgan County and in refusing to permit the petitioner full opportunity to prove that negroes were systematically excluded.

POINT I.

The Alabama courts denied petitioner's constitutional rights in refusing to quash for negro exclusion the indictment by the grand jury in Jackson County and the venire of the petit jury in Morgan County and in refusing to permit the petitioner full opportunity to prove that negroes were systematically excluded.

A.

These claims, asserted originally on the trial of this petitioner Patterson and by stipulation made applicable to the case of the petitioner Norris, appear, as we have said, in identical form and identical paging in both records (44-167, 418-497). The questions are fully discussed in the brief on the Norris application for certiorari (pp. 7-28). That discussion is adopted by the petitioner Patterson and to it the Court is respectfully referred.*

B.

1. The claims of constitutional rights were duly raised in the trial court by motion to quash the indictment and by motion to quash the venire. They were expressly overruled in the opinions of that court. Exceptions were taken to the denials (163-167, 495-497; see also brief on Norris application for certiorari, p. 7).

2. The Supreme Court of Alabama expressly, when in the Norris case the record in the Patterson case was before it, overruled these claims (Norris Record, 676-687). The question whether they separately passed upon the identical issues in the Patterson case is, therefore, wholly technical.

---

*The only difference between the two cases is that in the Patterson case the bill of exceptions was stricken and in the Norris case it was not.

3. That the claims of federal constitutional right were actually passed upon when the Alabama Supreme Court affirmed Patterson's conviction there is no reason to doubt. "All motions which are made in writing"—and the motions to quash the indictment and the venire were made in writing—together with "the ruling of the court thereon" become a "part of the record proper on appeal" (Code, Sec. 9459, Appendix, p. 21). The Alabama Supreme Court is required to pass upon all questions "apparent on the record or reserved by bill of exceptions" (Code, Sec. 3258, Appendix, p. 19).

The Alabama Supreme Court did not disregard *all* questions. It disregarded only those questions "reviewable alone by bill of exceptions" (793). It did not suggest that these motions were among the questions reviewable by bill of exceptions "alone."

Motions challenging the composition of the jury, whether grand or petit, may be brought before the appellate court in any way that certifies to the accuracy of the record on these motions. The question is thoroughly discussed and the authorities are collected in the late opinion of Bond, C. J., writing for the unanimous Maryland Court of Appeals in *Lee* v. *State,* 163 Md. 56. The Maryland court reversed a judgment of conviction because of the exclusion of negroes. And it specifically overruled the contention that the issue should have been raised by bill of exceptions.

It seems then clear, under the Alabama statutes and under the common law, that motions addressed to the composition of juries are part of the record without a bill of exceptions. The question has not been decided in Alabama. But the implication of the only authority we have been able to find is that motions of the sort need not be brought up by bill of exceptions (*Stover* v. *State,* 204 Ala. 311, 312). Both statute and common law thus confirm that the Supreme Court of the State did pass upon the questions raised by the motions to quash the indictment and the venire.

4. But had the Supreme Court of Alabama in so many words expressly refused to pass upon these questions the circumstance would have made no difference. A claim of federal constitutional right is denied "as well by the refusal of the state court to decide the question as by an erroneous decision of it" (*Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282).

The identical record was before the Alabama Supreme Court. The claims of federal constitutional right were upon that record expressly overruled,—in the opinion in the Norris case, argued at the same time as the Patterson case and decided on the same day as the Patterson case. If the Alabama Supreme Court had refused to consider Patterson's contentions under the Fourteenth Amendment such action would have been "equivalent to a decision against the federal right which was actually set up and claimed" (*Des Moines Navigation Co.* v. *Iowa Homestead Co.*, 123 U. S. 552, 555, 556).*

5. Definitely the petitioner's opportunity to have a review by this Court of the rulings which denied his claims under the Constitution of the United States cannot be lost by the striking—under a ruling as to a local practice—of his bill of exceptions:

Whether federal constitutional rights have been sufficiently brought to the attention of the state courts is itself a federal question in the decision of which this Court is not concluded by the view taken by the highest court of the state (*Carter* v. *Texas*, 177 U. S. 442, 447), especially where

*The appeals in two cases arising out of the same transaction and involving the same claim of federal right had been argued together in the state court. In one case the federal question had been presented in the printed brief; in the other it had not. Because of the failure to present the question in the printed brief in the second case—although it had been raised on the trial in both cases—the Supreme Court of Iowa refused to consider it, saying: "We are required to hold that the question of prior adjudication cannot be determined in this case" (quoted 123 U. S., at p. 554). But this Court took jurisdiction of the federal question in this second case and reversed the judgment of the state court on the merits.

the federal rights were distinctly asserted in the trial court (*Erie Railroad Co.* v. *Purdy*, 185 U. S. 148, 154; see also *Love* v. *Griffiths*, 266 U. S. 32, 33), most especially where the very claims under the constitution of the United States were in a companion case and on an identical record overruled by the court of last resort of the state (*Des Moines Navigation Co.* v. *Iowa Homestead Co., supra*).

"Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights when plainly and reasonably made, is not to be defeated under the name of local practice" (*Davis* v. *Wechsler*, 263 U. S. 22, 24).*

The state through its officials, judicial and executive, misled petitioner seeking to assert his constitutional rights:

The court declared and the Attorney General acquiesced in the declaration that petitioner had "thirty days within which to make a motion for a new trial",—*i. e.*, until December 29 *not* 23. Subsequently continuances were twice granted.

The Attorney General did not move seasonably to strike the motion for new trial nor did he give the least intention that he regarded the motion as made too late. On the contrary he waited until February 24 before making his motion to strike. Had he made his motion in time and had it been granted there would have been plenty of time to serve the bill of exceptions.**

Rogers v. *Alabama*, 192 U. S. 226, supplies a familiar illustration: The issue was of negro exclusion. The Alabama courts refused to consider the papers which raised the issue upon the ground that they were too prolix. This Court expressly rejected this ruling upon the point of local practice and passed upon the case made.

**The Court will of course understand that a bill of exceptions would not be prepared until the motion for a new trial had been disposed of. If the motion for a new trial had been granted—as on the preceding trial it had been granted by Judge Horton (Appendix, p. 27)—there would have been no occasion for a bill of exceptions.

Even after February 24th, when the motion for a new trial was stricken,—the bill of exceptions would have been prepared and filed within the 90-day period had not the defense once more been misled,—this time by the motion of the Attorney General fixing the date of judgment as December 6. The bill of exceptions *was* filed within the 90-day period,—*accepting* as the date of judgment December 6, the date the Attorney General of Alabama himself accepted and declared on February 24.

Under the Alabama law the failure to file the bill of exceptions within the statutory time is not a jurisdictional defect. Unless there is affirmative action—unless a motion to strike the bill of exceptions is made—a bill, though filed late, must be entertained. This the Supreme Court of Alabama recognized (792) citing *Ettore* v. *State,* 214 Ala. 99.* The Attorney General was under no obligation to make the motion to strike. In view of the facts that this was a capital case, that the defense had been misled, that the circumstance had been called to his attention (29-32, 35-36, 42), the Attorney General was under compelling obligation *not* to make the motion.

The Supreme Court of Alabama stated that it was applying "settled construction" in sustaining the motion to strike the bill of exceptions (793). But the Alabama courts had never before considered a case in which state officials had first misled a defendant as to the time for filing his bill and later made the delay in filing the basis for striking the bill. There was no precedent for holding that the Attorney General in this case was not debarred from changing, to the detriment of the defendant, his position

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*Michie Annotated Code (1929) states (p. 1056) that the matter of time "has ceased to be jurisdictional."

with reference to the date of the judgment. If he was precluded from claiming the date to be other than as originally stated by him, namely, December 6, 1933, then the motion to strike must have been denied.*

The issue of federal constitutional right, there is every reason to suppose, was considered by the court of last resort of the state as well as by the trial court. For the issue of negro exclusion was raised not by bill of exceptions "alone" but by separate motions in writing; the striking of the bill did not affect the consideration of the federal issue. And if the fact as to the local practice had been otherwise this Court's jurisdiction would not have been impaired. Suppose the state court had ruled that under the state practice the right to raise the federal issue was forfeited by a matter concededly not jurisdictional: by a few days' delay in filing the bill of exceptions,—delay in which the trial court, the prosecuting officials of the county, the chief law officer of the state acquiesced and to which they contributed. Suppose the state court had found no unfairness in such a practice and result,—even in its relation to issues under the Constitution of the United States. This court applies its own view of what in the circumstances is fair (Compare *Creswill* v. *Knights of Pythias*, 225 U. S. 246; *New York Central R. R.* v. *New York & Pa. Co.*, 271 U. S. 124, 126; *Ancient Egyptian Order* v. *Michaux*, 279 U. S. 737, 744-745; *Postal Telegraph Cable Co.* v. *Newport*, 247 U. S. 464, 475, 476). Fairness requires that the rulings which denied rights under the Constitution of the United States be reviewed by this Court (*Davis*

*That on general principles he was so precluded is clear. See *Gas & Electric Co.* v. *Simpson*, 118 Tenn. 532, 539-543; *Winona Paper Company* v. *First National Bank*, 33 Ill. App. 630, 632; cf. *Brown* v. *Snell*, 57 N. Y. 286, 301. *Ettore* v. *State*, cited by the Supreme Court of Alabama (792) involved a wholly different question. There the statutory period had expired *before* the state officials had in any way acquiesced in the filing of a late bill. There was no contention that the officials had contributed to the delay and thereby prejudiced the defendant.

v. *Wechsler, supra; Taylor* v. *United States,* 286 U. S. 1, 5; *Jennings* v. *Philadelphia, Baltimore & Washington Ry. Co.,* 218 U. S. 255, 258; *McGourkey* v. *Toledo & Ohio Ry.,* 146 U. S. 536, 550; *In re Chateaugay Iron Co.,* 128 U. S. 544, 556; *Davis* v. *Patrick,* 122 U. S. 138).

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers to the end that rights under the Constitution of the United States should be preserved, and accordingly a writ of certiorari should be granted and the Court should review and reverse the decision of the Supreme Court of Alabama.

WALTER H. POLLAK,
OSMOND K. FRAENKEL,
Attorneys for Petitioner.

WALTER H. POLLAK,
OSMOND K. FRAENKEL,
CARL S. STERN,
of Counsel.

ALABAMA CODE.

SECTION 3258. (6264) (4333) (4509) (4990) *Assignment or joinder of error unnecessary; duty of court.*—In cases taken to the supreme court or court of appeals under the provisions of this chapter, no assignment of errors or joinder in errors is necessary; but the court must consider all questions apparent on the record or reserved by bill of exceptions, and must render such judgment as the law demands. But the judgment of conviction must not be reversed because of error in the record, when the court is satisfied that no injury resulted therefrom to the defendant.

SECTION 6433. (3019) (616-620) (2761) (3113) (2760) (2358) *When bill signed.*—Bills of exceptions may be presented to the judge or clerk at any time within ninety days from the day on which the judgment is entered, and not afterwards; and all general, local, or special laws or rules of court in conflict with this section are repealed, abrogated and annulled. The judge or clerk must indorse thereon and as a part of the bill the true date of presenting, and the bill of exceptions must, if correct, be signed by the judge within sixty days thereafter. When the bill of exceptions is presented to the clerk, it shall be his duty forthwith to deliver or forward it to the judge. Presentation of the bill of exceptions within ninety days after the granting or refusing of a motion for a new trial shall be sufficient to preserve for review the rulings of the trial court on the trial of the original cause, as well as the ruling of the court on the motion for a new trial.

SECTION 6434. (3020) *Striking bills of exceptions, and declining to consider them because not signed within time required.*—The appellate court may strike a bill of exceptions from the record or file because not presented or signed within the time required by law, but shall not do so ex mero motu, but only on motion of a party to the

record of his attorney; the object and effect of this statute being to allow parties to waive or consent for the time of signing bills of exceptions.

SECTION 6670. *Executions on judgments; new trial must be asked in thirty days.*—After the lapse of ten days from the rendition of a judgment or decree, the plaintiff may have execution issued thereon, and after the lapse of thirty days from the date on which a judgment or decree was rendered, the court shall lose all power over it, as completely as if the end of the term had been on that day, unless a motion to set aside the judgment or decree, or grant a new trial has been filed and called to the attention of the court, and an order entered, continuing it for hearing to a future day. (1915, p. 707, Sec. 3.)

SECTION 8603. (7247) *Qualifications of persons placed on jury roll and in jury box.*—The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, but no person must be selected who is under twenty-one or over sixty-five years of age, or, who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English, and has all the other qualifications prescribed herein and is a freeholder or householder, his name may be placed on the jury roll and in the jury box. (1909, p. 305, Sec. 11.)

SECTION 8606. *Jury commission must place name of every qualified person on jury roll: Use of initials alone not allowed.*—The jury commission shall see that the name of every person possessing the qualifications prescribed by

this chapter to serve as a juror shall be placed on the jury roll and in the jury box, and they may summon and cause to attend before them any person residing within the county and examine him on oath, touching the name, residence, occupation and qualification of any person residing in the county. The commission must not allow initials only to be used for a juror's name, but one full Christian name or given name, shall in every case be used, and in case there are two or more persons of the same or similar name, the name by which he is commonly distinguished from the other persons of the same or similar name, shall also be entered as well as his true name. (1909, p. 305, Sec. 14.)

SECTION 9459. *Motions made in writing, on appeal, become part of record.*—All motions which are made in writing in any circuit court or any court of like jurisdiction in any cause or proceeding at law, shall, upon an appeal become a part of the record, and the ruling of the court thereon shall also be made a part of the record, and it shall not be necessary for an exception to be reserved to any ruling of the court upon any such motion; and it shall constitute a part of the record proper on appeal. (1915, p. 598, Sec. 1.)

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OPINION OF JUDGE HORTON.

MORGAN CIRCUIT COURT.

STATE OF ALABAMA,

Plaintiff,

vs.

HAYWOOD PATTERSON,

Defendant.

The defendant in this case has been tried and convicted for the crime of rape with the death penalty inflicted. He is one of nine charged with a similar crime at the same time.

The case is now submitted for hearing on a motion of a new trial. As human life is at stake, not only of this defendant, but of eight others, the Court does and should approach a consideration of this motion with a feeling of deep responsibility, and shall endeavor to give it that thought and study it deserves.

Social order is based on law, and its perpetuity on its fair and impartial administration. Deliberate injustice is more fatal to the one who imposes than to the one on whom it is imposed. The victim may die quickly and his suffering cease, but the teachings of Christianity and the uniform lessons of all history illustrate without exception that its perpetrators not only pay the penalty themselves, but their children through endless generations. To those who deserve punishment, who have outraged society, and its laws on such an impartial justice inflicts the penalties for the violated laws of society, even to the taking of life itself; but to those who are guiltless the law withholds its heavy hand.

The Court will decide this motion upon the sole consideration of what is its duty under the law. The Court must be faithful in the exercise of the powers which it believes it possesses as it must, be careful to abstain from the assumption of those not within its proper sphere. It has endeavored with diligence to enlighten itself with the wisdom declared in the cases adjudged by the most pure and enlightened judges who have ornamented the Courts of its own state, as well as the distinguished jurists of this country and its Mother England. It has been unstinted in the study of the facts presented in the case at bar.

The law wisely recognizes the passions, prejudices and sympathies that such cases as these naturally arouse, but sternly requires of its Ministers freedom from such actuating impulses.

The Court will now proceed to consider this case on the law and evidence only making such observations and conclusions as may appear necessary to explain and illustrate the same.

There are a number of the grounds of the motion. The Court has decided that no good purpose may be subserved in considering a number of these; without deciding whether these grounds are well based or not, the Court sees no need of their being considered. These omitted grounds are such as probably would not re-occur in another trial, and if they did they would certainly be under a different form. The vital ground of this motion, as the Court sees it, is whether or not the verdict of the jury is contrary to the evidence. Is there sufficient credible evidence upon which to base a verdict?

The case of Caraway vs. Graham, 218 Ala. 453; 118 So. 807, was a suit against a surgeon for malpractice. The lower Court refused to grant a new trial, but the Supreme Court reversed the lower Court. Judge Sayre delivered the opinion of the Court stating:

> "The Court here should proceed with great caution; but it should leave no evident mistake unrighted. 'This

Court has not renounced its duty nor neglected its power'—certainly it ought not to do so—'to revise the verdict of juries, and the conclusions of the trial judges on questions of facts, where, in our opinion, after making all proper allowance and indulging all reasonable intendments in favor of the court below, we reach a clear conclusion that the finding and judgment are wrong.' Twinn Tree Lumber Co. vs. Day, 181 Ala. 565, 61 So. 914, 915.

It cannot be said that there was no contradiction in the evidence and its tendencies; the question for decision was one for the jury, in the first place, at least. Nevertheless, ultimately and within reasonable limits it is the right and duty of the Court to revise the finding of the jury. The case at bar was in a peculiar sense one to be decided on the expert testimony. The great weight of that testimony was with the defendant, and our judgment is that the motion for new trial should have been granted."

In Yarbrough vs. Mallory, 225 Ala. 579; 144 So. 447, a decision most recently rendered, Judge Bouldin granted a new trial because in his opinion the verdict was clearly unjust and declared that the Court need not determine what wrongful influence resulted in gross miscarriage of justice. In defining these influences he stated:

"'Bias' means to incline to one side. 'Passion' means moved by feeling or emotions, or may include sympathy as a moving influence without conscious violation of duty. 'Prejudice' includes the forming of an opinion without due knowledge or examination."

We note that Judge Bouldin says that a jury may be moved by passion thus vitiating the verdict, and states that passion may include sympathy as a moving influence; and there need be no conscious violation of duty.

Again in the case of Birmingham News Co. vs. Lester, 222 Ala. 503, 133 So. 270, the same judge, Judge Bouldin, declared:

> "That the credibility of witnesses is involved, that opinion evidence of value, not conclusive upon the trier of fact, is to be considered, and that there is no yardstick to measure the damages for physical pain and suffering, does not withdraw the case from the supervisory power of the trial court over the verdicts of juries. In all these matters he is in like position with the jury, and clothed with the power and duty to relieve against verdicts which allowing all reasonable presumptions in their favor, are still found to be clearly wrong and unjust from any cause, whether by reason of passion and bias, or from mistake, inadvertence or failure to comprehend and appreciate the issues."

In Roan vs. State, 143 So. 454, a case of conviction of ...urder in the first degree, the Supreme Court, speaking through Thomas, J., declared:

> "We may conclude by saying that after allowing the reasonable presumptions in favor of the correctness of the verdict rendered—guilty of murder in the first degree—we are clear to the conclusion that on the evidence before us the preponderance thereof is against the verdict rendered."

And a new trial was granted.

These are the latest decisions of our Supreme Court. They could be multiplied.

Turning to the Court of Appeals we will consider a few cases rendered by that Court.

The case of Black vs. State, 24 Ala. App. 433; 136 So. 425, was a case of carnal knowledge, a case of like nature as rape. The evidence is set out in much detail and the

Court will not attempt to state it except that the prosecutrix testified positively to the fact. The Court of Appeals speaking through Bricken, P. J., concludes its decision in these words:

> "As stated, the evidence as to the defendant's carnal knowledge of Rachel Davis was in conflict, but it is insisted that when her evidence as to the unlawful act is considered in the light of human experience and common knowledge, the defendant's motion of a new trial should have been sustained, and that the weight of evidence against the verdict is so great that, 'the substantial ends of justice require the examination of the facts by another jury.' "

The case of Skinner vs. State, 22 Ala. App. 457; 116 So. 806, was a case of rape. In that case, Rice, J., declared:

> "As for sustaining the conviction for the offense of rape suffered by appellant, we feel impelled to say that under and in obedience to the well established rule prevailing in this state, it is our opinion, and we so hold that the evidence was entirely insufficient and the trial court erred in not setting aside the verdict and granting a new trial."

Culbert vs. State, 23 Ala. App. 557; 129 So. 315, was likewise a case of rape where the Court of Appeals set aside the verdict and granted a new trial.

It is unnecessary to further cite the decisions as to the duties of Courts in setting aside the verdicts of juries. The law is practically uniform.

Another question to be considered by the Court is how far a Court should go in referring to the evidence in a case upon granting or refusing a motion for a new trial on account of the insufficiency of the evidence. The English courts appear to be very careful in refraining from

setting out the evidence. This does not appear to be the prevailing doctrine either in this state or the other states, as well as the Supreme Court of the United States. Our Courts do not hesitate to set out any part or all the evidence when requisite in considering its sufficiency or insufficiency.

The Court will next consider the law as especially applicable to the crime of rape.

In the case of Bodde vs. State, 52 Ala. 395, Chief Justice Brickell, in speaking of the evidence of a prosecutrix who appeared to lack chastity, declared the law as follows:

> "Her known want of chastity may create a presumption that her testimony is false or feigned. Whether it creates such presumption, the jury must determine from all the evidence. She may be of ill fame for chastity, but she is still under the protection of the law, and not subject to a forced violation of her person, for the gratification of the propensities of the man who has strength to overpower her. No principle of law forbids a conviction on her uncorroborated testimony, though she is wanting in chastity, if the jury are satisfied of its truth. Her testimony should be cautiously scrutinized and the Court and jury should diligently guard themselves from the undue influence of the sympathy in her behalf which the accusation is apt to excite. If she did not conceal, but immediately discovered the offense, and the offender if known to her; if the place of its commission was such that if she made outcry it would not probably be heard and bring her assistance and defense,—these and other circumstances should be considered by the jury. The manner in which she testifies—the consistency of her testimony should also be carefully considered."

In Barnett vs. State, 83 Ala. 45; 3 So. 612, Judge Somerville said:

"In prosecutions for rape it is very proper for the jury to be exceedingly cautious how they convict a defendant on the uncorroborated testimony of the prosecutrix, especially where there is evidence tending to impeach her credibility; for the experience of courts in modern times has amply attested the assertion of Lord Hale, that the charge of rape is 'an accusation easy to make and hard to be proved, and harder still to be defended by the party accused though never so innocent.'"

The U. S. Supreme Court, in the case of Mills vs. U. S., 164 U. S. 644; 41 Law. Ed. 584, in setting aside a verdict of a jury convicting a defendant and sentencing him to death thus declared the law:

"The crime itself is one of the most detestable and abominable that can be committed, yet a charge of that nature is also one which all judges have recognized as easy to be made and hard to be defended against; and it has been said that very great caution is requisite upon all trials for this crime, in order that the natural indignation of men which is aroused against the perpetrator of such an outrage upon a defenseless woman may not be misdirected, and the mere charge taken for proper proof of the crime on the part of the person on trial."

33 Cyc., page 1485, declares the general holding of all the Courts to be as follows:

"The Courts have repeatedly approved Sir Mathew Hale's statements in regard to the crime of rape, that, 'it must be remembered, that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent;' and that we should 'be the more cautious upon

trials of offenses of this nature wherein the Court and jury may with so much ease be imposed upon without great care and vigilance; the heinousness of the offense many times transporting the judge and jury with so much indignation that they are over hastily carried to the conviction of the person accused thereof by the confident testimony, sometimes of malicious and false witnesses.'"

The law as to granting new trials in cases of rape is thus summed up in 33 Cyc., page 1497:

"But defendant should not be convicted without corroboration where the testimony of the prosecutrix bears on its face indications of unreliability or improbability, and particularly when it is contradicted by other evidence; and where the evidence preponderates in favor of defendant, or the verdict appears to have been influnced by passion or prejudice, it should always be set aside unless there is corroboration of prosecutrix."

With the law so written, let us now turn to the facts of the case. The Court will of necessity consider in detail the evidence of the chief prosecutrix, Victoria Price, to determine if her evidence is reliable, or whether it is corroborated or contradicted by the other evidence in the case. In order to convict this defendant, Victoria Price must have sworn duly to the fact of her being raped. No matter how reliable the testimony of the defendant and his witnesses, unless the State can make out a case upon the whole evidence a conviction cannot stand.

The claim of the State is that the defendant raped Victoria Price; that is the charge. The circumstances under which the crime was claimed to have been committed appear as follows:

On March 25th, 1931, the prosecutrix, Victoria Price, and Ruby Bates, her companion, boarded a freight train at

Chattanooga, Tennessee, for the purpose of going to Huntsville, Alabama. On the same train were seven white boys, and twelve negroes, who it appears participated, or are charged with participating in the occurrences on such train. All were tramps or "hoboing" their way upon this same freight train. About Stevenson, Alabama, a fight occurred between the negroes and the white boys and all the white boys, except one named Gilley, got off the train, or were thrown off the train, a short time after the train left Stevenson, Alabama. The distance from Stevenson to Paint Rock is thirty-eight miles. The train was travelling between twenty-five and thirty-five miles an hour. Some of the white boys, who were thrown off the train, returned to Stevenson, Alabama, and the operator there telegraphed to Paint Rock, a place down the line, reporting the fight, causing a posse and a large crowd to form at Paint Rock, and they surrounded the train as it pulled into Paint Rock and took therefrom nine negroes, one of whom was this defendant, the two white girls, and their white companion, Gilley. The negroes were arrested and lodged in the Scottsboro jail as well as the two women, and the seven white boys. The two women were forthwith carried to the office of a physician in Scottsboro, arriving there from one hour to one and one-half hours after they claimed a rape was committed upon them, and were examined by two skilled physicians, Drs. Bridges and Lynch. It was while the train was travelling between Stevenson and Paint Rock, between shortly after noon and three o'clock that the alleged rape was committed.

There have been two trials of this case; one at Scottsboro and the other the recent trial at Decatur. The trial at Scottsboro was reversed by the Supreme Court of the United States, who declared the defendants did not have the assistance of counsel. The motion in this case is upon the result of the trial at Decatur. The evidence at the trial at Decatur was vastly more extensive and differed in many important respects from the evidence at Scottsboro.

Much of the evidence at Scottsboro was introduced at the trial at Decatur, and the Court will consider the entire evidence submitted as it may appear necessary in considering this motion. The Court shall endeavor in quoting the evidence to quote it substantially, and sometimes literally as given, only stating its substance when requisite to make its meaning clear.

As stated the State relies on the evidence of the prosecutrix, Victoria Price, as to the fact of the crime itself, necessarily claiming that her r .ation is true. The defense insists that her evidence is a fabrication—fabricated for the purpose of saving herself from a prosecution for vagrancy, or some other charge.

The Court will, therefore, first set out the substantial facts testified to by Victoria Price and test it as the law requires, as to its reliability, or probability, and as to whether it is contradicted by the other evidence.

She states that on March 25, 1931, she was on a freight train travelling through Jackson County from Stevenson to Paint Rock; that Ruby Bates was with her on the train; that she had boarded the train at Chattanooga, Tennessee; that when she first boarded the train she got on an oil tank car. That at Stevenson, she and Ruby Bates walked down the train and got on a gondola car—a car without a top. That the car was filled with chert, lacking about one and one-half or two feet of being full. That the chert was sharp, broken rock with jagged ends; that as the train proceeded from Stevenson seven white boys got in the car with them and that they all sat down in one end of the car, next to a box car; that in about five or ten minutes twelve colored boys jumped from the box car into the gondola, jumping over their heads. That the defendant was one of them. That the colored boys had seven knives and two pistols; that they engaged in a fight with the white boys, ejecting all from the train except one, Orville Gilley; that this white boy stayed on the gondola, remained there and was still on the car when Paint Rock was reached,

and saw the whole thing that thereafter occurred on this car. That one of the negroes picked her up by the legs and held her over the gondola, and said he was going to throw her off; that she was pulled back in the car and one of the negroes hit her on the side of the head with a pistol causing her head to bleed; that the negroes then pulled off the overalls she was wearing and tore her step-ins apart. That they then threw her down on the chert and with some of the negroes holding her legs and with a knife at her throat, six negroes raped her, one of whom was the defendant; that she lay there for almost an hour on that jagged rock, with the negroes lying on top of her, some of whom were pretty heavy; that the last one finished just five minutes before reaching Paint Rock and that her overalls had just been pulled on when the train stopped at Paint Rock with the posse surrounding it. That she got up and climbed over the side of the gondola and as she alighted she became unconscious for a while, and that she didn't remember anything until she came to herself in a grocery store and she was then taken to Scottsboro, as the evidence shows, in an automobile and that in about an hour or an hour and one-half Dr. Bridges and Dr. Lynch made an examination of her person.

This witness further testified that she was wet on her private parts; that each negro wetted her more and more; that her private parts were bleeding; that the blood was on her clothes; that her coat had semen on it; that when Dr. Bridges and Dr. Lynch examined her they saw her coat and it was all spattered over with semen; that her dresses had blood and semen on them; that she had them on when the doctors examined her; that the coat was cleaned and that she washed the dresses in the jail before the trial. The evidence further shows without dispute that all nine negroes were taken in charge by the officers and carried to the Scottsboro jail.

With seven boys present at the beginning of this trouble with one seeing the entire affair, with some fifty or sixty

persons meeting them at Paint Rock and taking the women, the white boy, Gilley, and the nine negroes in charge, with two physicians examining the women within one to one and one-half hours, according to the tendency of all the evidence, after the occurrence of the alleged rape, and with the acts charged committed in broad daylight, we should expect from all this cloud of witnesses or from the mute but telling physical condition of the women or their clothes some one fact in corroboration of this story. Let us consider the rich field from which such corroboration may be gleaned.

1. Seven boys on the gondola at the beginning of the fight, and Orville Gilley, the white boy, who remained on the train, and who saw the whole performance.

2. The wound inflicted on the side of Victoria Price's head by the butt end of a pistol from which the blood did flow.

3. The lacerated and bleeding back of the body, a part of which was stripped of clothing and lay on jagged sharp rock, which body two physicians carefully examined for injuries shortly after the occurrence.

4. Semen in the vagina and its drying and starchy appearance in the pubic hair and surrounding parts.

5. Two doctors who could testify that they saw her coat all spattered over with semen; who could testify to the blood and semen on her clothes, and to the bleeding vagina.

6. Two doctors who could testify to the wretched condition of the woman, their wild eyes, dilated pupils, fast breathing, and rapid pulse.

7. The semen which must have eventually appeared with increasing evidence on the pants of the rapists as each

wallowed in its spreading ooze. The prosecutrix testified semen was being emitted by her rapists, and common sense tells us six discharges is a considerable quantity.

8. Live spermatozoa, the active principle of semen, would be expected in the vagina of the female from so recent discharges.

9. The washing before the first trial by Victoria Price of the very clothes which she claimed were stained with semen and blood.

The Court will not present the evidence which will show: That none of the white seven boys, or Orville Gilley, who remained on the train were put on the stand, except Lester Carter; that neither Dr. Bridges nor Dr. Lynch saw the wound inflicted on the head by the pistol, the lacerated or bleeding back which lay on jagged rocks; that the semen they found in the vagina of Victoria Price was of small amount; that the spermatozoa were non-motile, or dead; that they saw no blood flowing from the vagina; that they did not testify as to seeing the semen all spattered over the coat or blood and semen on the clothes; any torn garments or clothes; that these doctors testified that when brought to the office that day neither woman was hysterical or nervous about it at all, and that their respiration and pulse were normal; and that the prosecutrix washed the clothes evidencing the blood and semen.

Taking up these points in order what does the record show: None of the seven white boys were put on the stand, except Lester Carter, and he contradicted her.

Next was Victoria Price hit in the head with a pistol? For this we must turn to Dr. Bridges. It was agreed in open court that Dr. Lynch, who in company with Dr. Bridges at Scottsboro examined the two girls, would testify in all substantial particulars as Dr. Bridges, and Dr. Lynch was excused with that understanding when Dr. Bridges

completed his examination. In considering Dr. Bridges' testimony we observe he was a witness placed on the stand by the State. His intelligence, his fair testimony, his honesty, and his high professional attainments, impressed the Court, and certainly all that heard him. He was frank and unevasive in his answers. The Court's opinion is that he should be given full faith and credit. In further considering his testimony it was shown that he was examining these women with the most particular care to find evidence of a rape upon them, and that the women were accusing the negroes, and were being required to cooperate and exhibit whatever indicated they had been abused. Returning to the pistol lick on the head. The doctor testifies: "I did not sew up any wound on this girl's head; I did not see any blood on her scalp. I don't remember my attention being called to any blood or blow on the scalp." And this was the blow that the woman claimed helped force her into submission.

Next, was she thrown and abused, as she states she was, upon the chert—the sharp, jagged rock?

Dr. Bridges states as to physical hurts: we found some small scratches on the back part of the wrist; she had some blue places in the small of the back, low down, in the soft part, three or four bruises about like the joint of your thumb, small as a pecan, and then on the shoulders a blue place about the same size, and we put them on the table, and an examination showed no lacerations. The evidence of other witnesses as well as the prosecutrix will show that the women had travelled from Huntsville to Chattanooga, and were on the way back. There is other evidence tending to show they had spent the night in a hobo dive; that they were having intercourse with men shortly before that time. These few blue spots, and this scratch would be the natural consequence of such living; vastly greater physical signs would have been expected from the forcible intercourse of six men under such circumstances.

Victoria Price testified that as the negroes had repeated

intercourse with her she became wetter and wetter around her private parts; that they finished just as they entered Paint Rock, and that she was taken in an automobile immediately to the doctors' office. There Dr. Bridges and Dr. Lynch, as has been shown, examined her. They looked for semen around her private parts; they found on the inside of her thighs some dirty places. These dirty places were hardly dry, and were infiltrated with dust, about what one would get from riding trains. It was dark dirt or dust. While the doctor did not know what this drying fluid was, his opinion was that it was semen, but whatever it was, it was covered with heavy dust and dirt. He next examines the vagina to see whether or not any semen was in the vagina. In order to do this he takes a cotton mop and with the aid of a pseculum and headlight inserts the cotton mop into the woman's vagina and swabs around the cervix, which is the mouth of the uterus or womb. He extracts from this vagina the substance adhering to the cotton after he has swabbed around the cervix, and places this substance under the microscope. He examines this substance to see if spermatozoa are to be found, and what is the condition of the spermatozoa. Upon the examination under the microscope he finds that there are spermatozoa in the vagina. This spermatozoa he ascertains to be non-motile. He says to the best of his judgment that non-motile means the spermatozoa were dead. For any fluid escaping from the vagina to become infiltrated with coal dust and dirt this dirt under the circumstances in this case must have gradually sifted upon the drying fluid, and necessarily a considerable period of time would be required for such an infiltration. The fresh semen emitted by so many negroes would have had a tendency rather to wash off any dirty places around the vagina, and it must have remained there for a considerable period for it to become thus infiltrated with dust and coal dust. Around the cervix the spermatozoa live under the most favorable conditions. While the life of the spermatozoa may be variable, still it appears

from the evidence that in such a place as this it would have taken at least several hours for the spermatozoa to have become non-motile, or dead. When we consider as the facts hereafter detailed will show, that this woman had slept side by side with a man the night before in Chattanooga, and had intercourse at Huntsville with Tiller on the night before she went to Chattanooga. When we further take into consideration that the semen being emitted, if her testimony were true, was covering the area surrounding the private parts, the conclusion becomes clearer and clearer that this woman was not forced into intercouse with all of these negroes upon that train, but that her condition was clearly due to the intercourse that she had had on the nights previous to this time.

Was there any evidence of semen on the clothes of any of the negroes? In the case of State vs. Cowing, 99 Minn. 123; 9 Am. & En. Ann. cases 566, the Court said the physicians who testified stated that the semen would have remained on the clothes and could have been found after the expiration of several days. And this is probably a well known fact. Though these negroes were arrested just after the alleged acts, and though their clothes and pants were examined or looked over by the officers, not a witness testified as to seeing any semen or even any wet or damp spots on their clothes.

What of the coat of the woman spattered with semen, and the blood and semen on the clothes and the bleeding vagina?

Dr. Bridges says he did not see any blood coming from her vagina; that Mrs. Price had on step-ins, but did not state that they were torn or had blood or semen on them. Not a word from this doctor of the blood and semen on the dress; not a word of the semen all spattered over the coat. And this was a doctor so conscientious and thorough in his examination as to make the woman undress and to examine with care every part of her body; a doctor

who in his search for semen went to the extent of swabbing out the vagina and of examining its contents under the microscope.

What of the physical appearance of these two women when the doctors saw them? Dr. Bridges says that when these two women were brought to his office neither were hysterical, or nervous about it at all. He noticed nothing unusual about their respiration and their pulse was normal.

Such a normal physical condition is not the natural accompaniment, or result of so horrible an experience, especially when the woman testified she fainted from the injuries she had received.

The fact that the women were unchaste might tend to mitigate the marked effect upon their sensibilities but such hardness would also lessen the probability of either of them fainting. If the faint was feigned then her credibility must suffer from such feigned actions. And this witness' anger and protest when the doctors insisted on an examination of her person was not compatible with the depression of spirit likely to be caused by the treatment she said she had received.

Lastly, before leaving Dr. Bridges let us quote his summation of all that he observed:

> "Q. In other words the best you can say about the whole case is that both of these women showed they had had intercourse?
>
> A. Yes, sir."

Is there corroboration in this? We think not, especially as the evidence points strongly to Victoria Price having intercourse with one Tiller on several occasions, just before leaving Huntsville. That she slept in a hobo jungle in Chattanooga, side by side with a man. The dead spermatozoa, and the dry dirty spots would be expected from these earlier acts.

Victoria Price testified that she washed her clothes which were stained with semen and blood before even the trial at Scottsboro.

The Supreme Court of Minnesota, in the case of State vs. Cowing, 99 Minn. 123, 9 Am. & En. Ann. cases 566, in setting aside a conviction of rape laid great stress and largely based its action upon such conduct of the prosecuting witness; this Court said:

> "While not without some corroboration, the testimony of prosecutrix is aided most largely by that of her sister; but, that corroboration is to be weighed in connection with the fact, that she and her sister, by washing the skirt, which if her testimony were true, would probably have borne evidence of blood and semen, effectually destroyed the best possible evidence under the circumstances."

Is there any other corroboration? There was a large crowd at Paint Rock when the freight arrived there. While they differed in many details as the make-up of the train and the exact car from which the different persons were taken, all of which is apparently unimportant, all agreed upon the main fact, that the nine negroes, the two women, and the white boy were all taken from the train. This undisputed fact constitutes about the whole extent of their evidence, except a statement by Ruby Bates that she had been raped, which experience the said Ruby Bates now repudiates. This statement by Ruby Bates appears to have been made under the following circumstances. There were three witnesses who testified to having seen the women at Paint Rock. One of the witnesses first saw them after they had gotten off the car and were both standing. Another witness did not see them for some time, he having first rounded up all the negroes. The third witness saw them as they were getting off the car. He states they first started to run toward the engine and as they approached a crowd

of men they turned and ran back in the opposite direction, and met a part of the posse who stopped them. Mr. Hill, the station agent, then came up to the women and asked them if the negroes had bothered them. Thereupon Ruby Bates stated that they had been raped. The facts appearing that the women instead of seeking the protection of the white men they saw were at first frightened, and the question propounded was in itself suggestive of an answer. Mr. Hill also states that the negroes were in a coal car; that he saw the heads of the negroes over the top of the car and they were trying to climb over the sides, were pulling themselves up, trying to get off. This clearly indicates that the negroes were not in the car filled with chert as the prosecutrix claims.

For any other corroboration in the evidence we now return to the freight train as it passes along the track just after leaving Stevenson. The witness, Lee Adams, at a point about one-quarter of a mile from the train, sees a fight between a number of white and colored boys; this is an admitted fact in the case.

The evidence of Ory Dobbins was admitted in corroboration of Victoria Price. When his evidence is studied it is found it does not corroborate her, or if so, very slightly. The good faith of this witness need not be the slightest questioned, only the lack of correspondence of his testimony with hers. He stated that he lived three miles from Stevenson near the railroad as it ran toward Scottsboro; that as he walked to his barn he saw a freight train; that as it passed his house he saw a white woman sitting on the side of a gondola and a negro put his arm around her waist and throw her back in the car; that he saw the car as it passed; that it was in his line of vision for a few feet, pointing out a door in the court room as the distance. His reason for stating it was a woman is as follows:

"Q. You know it was a woman, don't you?
A. She had on women's clothes.

The Court: She had on women's clothes?

Q. What kind of clothes, overalls?
A. No, sir, dress."

The very basis of his statement that she was a woman because she had on a dress does not apply to the women in this case, who were dressed in overalls.

He said it was in a coal car and there were five or six people in the car. Victoria Price says when they took hold of her that it occurred in a car almost filled with chert, and there were fifteen people in the car. The witness Dobbins said the gondola was between two box cars, while the evidence shows the gondola in which the woman was was the fifth of a string of eight gondolas.

The witness further stated that the car upon which he saw this occurrence was back toward the caboose. On the other hand the official make-up of the train shows the freight train consisted of forty cars; that the women were in the eleventh or twelfth car from the engine and there were twenty-eight or twenty-nine cars between this car and the caboose. In view of the fact that it was along in this vicinity that the fight was occurring between the negroes and the white boys, and as his reason for saying it was a woman was on account of the dress, and all agree these women had on overalls, this can at its best be only slight corroboration.

This is the State's evidence. It corroborates Victoria Price slightly, if at all, and her evidence is so contradictory to the evidence of the doctors who examined her that it has been impossible for the Court to reconcile their evidence with hers.

Next, was the evidence of Victoria Price reasonable or probable? Were the facts stated reasonable? This is one of the tests the law applies.

Rape is a crime usually committed in secrecy. A secluded place or a place where one ordinarily would not be observed is the natural selection for the scene of such a crime. The

time and place and stage of this alleged act are such to make one wonder and question did such an act occur under such circumstances. The day is a sunshiny day, the latter part of March; the time of day is shortly after the noon hour. The place is upon a gondola or car without a top. This gondola, according to the evidence of Mr. Turner, the conductor, was filled to within six inches to twelve or fourteen inches of the top with chert, and according to Victoria Price, up to one and one-half feet or two feet of the top. The whole performance necessarily being in plain view of any one observing the train as it passed. Open gondolas on each side. On top of this chert twelve negroes rape two white women; they undress them while they are standing up on this chert; this prosecuting witness is then thrown down and with one negro continuously kneeling over her with a knife at her throat, and one or more holding her legs, six negroes successively have intercourse with her on top of that chert, as one arises off of her person, another lies down upon her; those not engaged are standing or sitting around; this continues without intermission although that freight train travels for some forty miles through the heart of Jackson County; through Fackler, Hollywood, Scottsboro, Larkinsville, Lin Rock and Woodville, slowing up at several of these places until it is halted at Paint Rock; Gilley, a white boy, pulled back on the train by the negroes, and sitting off, according to Victoria Price, in one end of the gondola, a witness to the whole scene; yet he stays on the train, and he does not attempt to get off of the car at any of the places where it slows up to call for help; he does not go back to the caboose to report to the conductor or to the engineer in the engine, although no compulsion is being exercised upon him, and instead of there being any threat of danger to him from the negroes, they themselves have pulled him back on the train to prevent him being injured from jumping off the train after it had increased its speed; and in the end by a fortuitous circumstance just before the train pulls into Paint Rock,

the rapists cease and just in the nick of time the overalls are drawn up and fastened, and the women appear clothed as the posse sight them. The natural inclination of the mind is to doubt and to see further search.

Her manner of testifying and demeanor on the stand militate against her. Her testimony was contradictory, often evasive, and time and again she refused to answer pertinent questions. The gravity of the offense and the importance of her testimony demanded candor and sincerity. In addition to this the proof tends strongly to show that she knowingly testified falsely in many material aspects of the case. All this requires the more careful scrutiny of her evidence.

The Court has heretofore devoted itself particularly to the State's evidence; this evidence fails to corroborate Victoria Price in those physical facts, the condition of the woman raped, necessarily speaking more powerfully than any witness can speak who did not view the performance itself. The Court will next consider her credibility, and in doing so, some of the evidence offered for the defendant will also come in for consideration. In considering any evidence for the defendant which would tend to show that Victoria Price swore falsely, the Court will exclude the evidence of witnesses for defendant, who themselves appear unworthy of credit, unless the facts and circumstances so strongly corroborate that evidence that it appears true.

Lester Carter was a witness for the defendant; he was one of the white boys ejected from the train below Stevenson. Whether or not he is entitled to entire credit is certainly a question of great doubt; but where the facts and circumstances corroborate him, and where the failure of the State to disprove his testimony with witnesses on hand to disprove it. the Court sees no reason to capriciously reject all he said.

Victoria Price denied she knew him until she arrived at Scottsboro; it became a question to be considered as to whether Lester Carter knew her at Huntsville and saw her

committing adultery on several occasions with one Tiller just before leaving for Chattanooga, and returning on the freight the next day; the facts he testified to might easily account for the dead spermatozoa in her vagina. He says he met Victoria Price and Tiller while in jail at Huntsville. That all three were inmates of the jail at the same time. That Ruby Bates visited Tiller and Victoria Price while they were in jail, and he, Carter, met her at the jail. That after all had gotten out, and he had finished his sentence, he stayed in the home of Tiller and his wife, and he and Tiller would go out and be with these girls. That they all planned the Chattanooga trip together, and that just before the trip, or the night before, all four were engaged in adulterous intercourse. Victoria Price stated on the stand that Tiller, the married man, was her boy friend and was in her home the night before she left for Chattanooga; that he had a right there, and he was corresponding with her. Tiller was in the State's witness room then and identified by Carter Carter, when he was brought out of the witness room by the Court's order. Tiller, though there in court, was not put on the stand to deny what Carter said. There is no reason to doubt Carter was telling the truth then. Next Carter said that when he and Ruby Bates and Victoria Price arrived in Chattanooga about eight o'clock at night, all went to what is known as the "Hoboes' Jungle", a place where tramps of all descriptions spent the night in the open; there are numerous witnesses who corroborated him in this statement; that they met the boy Gilley and all four slept side by side, he by the side of Ruby Bates, and Victoria by the side of Gilley. Victoria Price, said that she and Ruby Bates went to Chattanooga seeking work; that they went alone and spent the night at Mrs. Callie Brochie's, a friend of hers formerly living in Huntsville, but had moved to Chattanooga. Was this true? The Chattanooga Directory was introduced in evidence; residents of Chattanooga, both white and colored, took the stand stating that no such woman as Callie Brochie

lived in Chattanooga and had not ever lived there so far as they knew. Though Victoria Price first made this statement more than two years ago at Scottsboro, no witness was offered either from Chattanooga or Huntsville showing any such woman had ever lived in either such place.

Victoria Price said the negroes jumped off a box car over their heads into the gondola, where she, Ruby Bates, and the seven white boys were riding with seven knives and two pistols and engaged in a fight with the white boys; the conductor of the train who had the official make-up of the train, stated there were eight gondola cars together on the train; that the women were in one of the middle cars, and that there were three gondola cars between the car in which they were riding and the nearest box car. Lester Carter stated that he was one of the seven boys engaged in the fight with the negroes; that he did not see a single knife or pistol in the hands of the negroes. And although these seven white boys were kept in jail at Scottsboro until after the first trial no one testified to any knife or pistol wounds on any of them.

Further, there was evidence of trouble between Victoria Price and the white boys in the jail at Scottsboro because one or more of them refused to go on the witness stand and testify as she did concerning the rape; that Victoria Price indicated that by so doing they would all get off lighter.

The defendant and five of the other negroes charged with participating in this crime at the same time went on the stand and denied any participation in the rape; denied that they knew anything about it, and denied that they saw any white women on the train. Four of them did state that they took part in the fight with the white boys, which occurred on the train. Two of them testified that they knew nothing of the fight, nor of the girls, and were on an entirely different part of the train. Each of these two testified as to physical infirmities. One testified he was so diseased he could hardly walk, and he was examined at Scottsboro

according to the evidence and was found to be diseased. The other testified that one eye was entirely out and that he could only see sufficiently out of the other to walk unattended. The physical condition of this prisoner indicates apparently great defect of vision. He testified, and the testimony so shows that he was in the same condition at Scottsboro and at the time of the rape. He further testified that he was on an oil tank near the rear of the train, about the seventh car from the rear; that he stayed on this oil tank all of the time and that he was taken from off of this oil tank. The evidence of one of the trainmen tends to show that one of the negroes was taken off of an oil tank toward the rear of the train. This near blind negro was among those whom Victoria Price testified was in the fight and in the party which raped her and Ruby Bates. The facts strongly contradict any such statement.

History, sacred and profane, and the common experience of mankind teach us that women of the character shown in this case are prone for selfish reasons to make false accusations both of rape and of insult upon the slightest provocation, or even without provocation for ulterior purposes. These women are shown, by the great weight of the evidence, on this very day before leaving Chattanooga, to have falsely accused two negroes of insulting them, and of almost precipitating a fight between one of the white boys they were in company with and these two negroes. This tendency on the part of the women shows that they are pre-disposed to make false accusations upon any occasion whereby their selfish ends may be gained.

The Court will not pursue the evidence any further.

As heretofore stated the law declares that a defendant should not be convicted without corroboration where the testimony of the prosecutrix bears on its face indications of unreliability or improbability, and particularly when it is contradicted by other evidence. The testimony of the prosecutrix in this case is not only uncorroborated, but it also bears on its face indications of improbability and is

contradicted by other evidence, and in addition thereto the evidence greatly preponderates in favor of the defendant. It, therefore, becomes the duty of the Court under the law to grant the motion made in this case.

It is, therefore, ordered and adjudged by the Court that the motion be granted; that the verdict of the jury in this cause, and the judgment of the Court sentencing this defendant to death be, and the same is hereby set aside and that a new trial be and the same is hereby ordered.

This June 22nd, 1933.

JAMES E. HORTON,
Circuit Judge.

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Supreme Court of The United States

October Term, 1934

HAYWOOD PATTERSON,
Petitioner,

against

STATE OF ALABAMA,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I

Opinion of the Court Below

The opinion has not yet been officially reported. It appears in the Southern Reporter advance sheet of October 25, 1934, 156 Southern 567 and at pages 788-794 of the record. An application for rehearing was denied without opinion (806).

II

Statement of the Case

Petitioner is one of nine Negro boys who is charged with having raped two white girls, Victoria Price and Ruby Bates. The crime is alleged to

have been committed while the parties were riding on a freight train through Jackson County, Alabama, on March 25, 1931.

The nine defendants were tried in Jackson County, Alabama, in the Spring of 1931 and all of them were found guilty of the crime of rape and their punishment fixed at death with the exception of one, Roy Wright, in whose case the jury was unable to agree and a mistrial was ordered by the court. Appeals were taken to the Supreme Court of Alabama which court affirmed the decision of the lower court as to all of the defendants except one, Eugene Williams (*Patterson vs. State*, 224 Ala. 531, 141 So. 201; *Weems et al vs. State*, 224 Ala. 524, 141 So. 215). Thereafter the defendants appealed to the Supreme Court of the United States which Court reversed the decision of the Supreme Court of Alabama on the theory of inadequate representation by counsel (*Powell et al vs. State of Alabama*, 287 U. S. 45).

After the cases had been remanded to the Circuit Court of Jackson County for retrial, a motion for change of venue was filed on behalf of the defendants which motion was granted and the cases transferred to the Circuit Court of Morgan County, Alabama.

The petitioner was tried in Morgan County in the spring of 1933 and was convicted and sentenced to death. Judgment of conviction was subsequently set aside by the trial judge.

There was a motion filed on behalf of all of the defendants to quash the indictment as well as the trial venire when the cases were called for trial before Judge Callahan in the Circuit Court of Morgan County, Alabama, in November of 1933. The State denied each and every allegation of the motion to quash the indictment as well as the motion to quash the venire. The ground on which the defendants based their claim that the indictment and the trial venire should be quashed was that Negroes had been arbitrarily and systematically excluded from the juries in Jackson County wherein the indictments were found and in Morgan County wherein the cases were tried. Many witnesses were called and much testimony placed before the trial judge who denied both motions.

The petitioner was found guilty on December 1, 1933 and on December 6, 1933 was sentenced to death. On December 29, 1933 petitioner filed in the office of the Clerk of the Circuit Court of Morgan County motions for a new trial (23, 26). On January 1, 1934 the Court without waiver or prejudice to the parties, continued the motions to January 26, 1934 (25). A similar order was entered by the Court on January 26, 1934 continuing the hearing on the motions until February 24, 1934 (25). On February 24, 1934 the State filed in open court a motion to strike the petitioner's motions for a new trial (24). On the same date the State's motion to strike the motions of petitioner for a new trial was granted (25). On March 5, 1934 the petitioner presented to the trial court the proposed bill of excep-

tions which was signed by the Court on May 2, 1934 (785). The cases were argued before the Supreme Court of Alabama on May 25, 1934 at which time the State filed a motion in that Court to strike the bill of exceptions or that which purported to be a bill of exceptions.

The Supreme Court of Alabama on the 28th day of June, 1934, rendered its decision in this case granting the State's motion to strike the bill of exceptions, this being the only point decided by the Supreme Court of Alabama.

III

Basis of Lower Court's Decision

The decision of the Supreme Court of Alabama is based entirely on a question of State appellate procedure. No Federal question is involved. The decision of the lower Court follows rules that have been laid down by that Court for many years. In order that we might more effectively present our contention in regard to the decision of said Court, it is best that we deal with the State's motion to strike the petitioner's motions for a new trial which motion was filed in the Circuit Court of Morgan County on February 24, 1934 and which was granted by that court on the same date.

On page 19 of the Record, it affirmatively appears that the petitioner was adjudged guilty of the crime of rape, on December 1, 1933. Section 6667, Code of Alabama, 1923 specifies the terms of the Cir-

cuit Courts of the several counties of Alabama. The terms of Court in Alabama run from first Monday in January to and including the last Saturday of June of every year and from the first Monday after July 4th to and including the last Saturday before Christmas day of every year. Under the above provision of law this Court judicially knows that the 1933 Fall term of the Circuit Court of Morgan County, Alabama expired on December 23, 1933. The petitioner's motions for a new trial were filed in the office of the Clerk of the Circuit Court on December 29, 1933, (21, 23).

Section 6670, Code of Alabama, 1923 deals with the time in which a motion for a new trial must be filed and provides as follows:

> 6670. After the lapse of ten days from the rendition of a judgment or decree, the plaintiff may have execution issue thereon, and after the lapse of thirty days from the date on which a judgment or decree was rendered, the court shall lose all power over it, as completely as if the end of the term had been on that day, unless a motion to set aside the judgment or decree, or grant a new trial has been filed and called to the attention of the court, and an order entered continuing it for hearing to a future day.

On February 24, 1934, the date on which the petitioner's motions for a new trial were to be heard, the attorneys representing the State of Alabama filed the aforementioned motion to strike petitioner's motions for a new trial on the ground that the

motions came too late in that the Circuit Court of Morgan County had lost jurisdiction over the case because of the fact that the term of court during which the judgment was rendered had expired.

The State's position was based on Sections 6667 and 6670, *supra*, and on decisions of the Supreme Court of Alabama construing those sections in cases practically identical with the one at hand.

We hereafter set out a quotation from the case of *Morris vs. Corona Coal & Iron Co.* 215 Ala. 47, 109 So. 278 which case we respectfully insist is direct authority for the position that in Alabama a motion for a new trial, even if filed within thirty days from the date of the judgment, is filed too late if the term of Court during which the judgment is rendered has expired by operation of law.

> The verdict and judgment was of date, December 19, 1924, the acceptance of service of motion for new trial was of date December 27, 1924, and the motion was called to the attention of the Court on that date and duly passed to January 5, 1925, for hearing. On that date: 'The case was called for hearing on the motion when defendant appeared and objected to any action being taken by the court on the motion, on the ground, among others, that the same was not filed until after the expiration of the term in which the cause was tried and verdict returned and judgment rendered. The case was then taken under advisement by the court and passed to January 12, 1925. And now on this day after consideration, the court is of the opinion that the objection interposed by defendant

to action on the motion is well taken and that this court is without jurisdiction to hear and pass upon plaintiff's motion for a new trial. Accordingly, it is the order and judgment of the Court that said motion for a new trial is null and void, and that the same be and it is hereby stricken from the files in this cause. This January 12, 1925.'

"We judicially know that the term of the court at which the case was tried expired by operation of law on the last Saturday before Christmas of the year 1924 and that the next term began on the first Monday in January, 1925. Code 1923, Sec. 6667; *Lewis v. Martin*, 210 Ala. 401, 98 So. 635; *Kyser vs. American Surety Company*, 213 Ala. 614, 105 So. 689. The motion was made and called to the attention of the court during the recess thereof or after expiration of the term at which the judgment was rendered. Had the motion been filed before or on the date of the general order of continuance by the court of pending causes, it would not have kept alive the motion for new trial or rehearing. It follows from the statute or the circuit court rule, and constructions thereof, that the action of the trial court was without error. Circuit Court Rule 22, Code 1923, Vol. 4, Page 901; *Lewis v. Martin* 210 Ala. 401, 98 So. 635; *Mt. Vernon Woodbury Mills v. Judge*, 200 Ala. 168, 75 So. 916; *Shipp v. Shelton*, 193 Ala. 658, 69 So. 102; *Ex parte School*, 205 Ala. 248, 87 So. 801; *Ex parte Margaret*, 207 Ala. 604, 93 So. 505; *Southern Ry Co. v. Griffith*, 177 Ala. 364, 58 So. 425; *Ex parte H. A. & B. R. Co.*, 105 Ala. 221, 17 So. 182. The statute provides that after the lapse of thirty days from the date on which the judgment or

decree was rendered the court shall lose all power over it as completely as if the end of the term had been on that day; and, we add, unless the motion therefor was filed, called to the attention of and passed by, the court before the adjournment of the term, and before the finality of the judgement or decree as provided by the statute after a lapse of thirty days from the date of its rendition. The provision of the statute for the lapse of thirty days as to such motion did not extend the term of the court as fixed by law, though the thirty days from rendition of a valid judgment or decree had not expired. See *Ex parte Bozeman*, 213 Ala. 223, 104 So. 402; *Ex parte Brickell, Judge*, 204 Ala. 441, 86 So. 1; *McCord vs. Rumsey*, 19 Ala. App. 62, 95 So. 168. *Monroe County Growers Ex. v. Harper*, 20 Ala. App. 532, 103 So. 600."

Section 6433, Code of Alabama, 1923 provides that bills of exceptions may be presented to the judge or the clerk at any time within ninety days from the day on which the judgment is entered and not afterwards; ..... presentation of bill of exceptions within ninety days after granting or refusing of the motion for a new trial shall be sufficient to preserve for review the rulings of the trial court on the trial of the original cause as well as the ruling of the court on the motion for a new trial.

Inasmuch as the motions for a new trial had been filed too late, they did not invoke the jurisdiction of the court and consequently the last part of Section 6433, above referred to, could have no application to this case. This is, of course, based on the assumption that the trial court's action in striking

the motions for a new trial was correct. Therefore, the date on which the statutory period of ninety days began to run was the date on which the judgment was rendered which date was December 1, 1933 (19). This Court judicially knows that ninety days from December 1, 1933, was March 1, 1934, which day was the last day on which the petitioner could present to the trial judge or to the clerk of the Circuit Court of Morgan County his bill of exceptions.

Section 6434, Code of Alabama, 1923 provides that an appellate court may strike a bill of exceptions because not presented or signed within the time required by law but that the court cannot do so ex mero motu but only on motion of the party to the record or his attorney.

On page 785 of the printed record, it affirmatively appears that the bill of exceptions or that which purports to be a bill of exceptions was presented by the petitioner to the trial judge on March 5, 1934 which was the ninety-fourth day since the date the judgment in this case was entered. The State of Alabama, under authority of Section 6434, supra, on the day the case was set for argument before the Supreme Court of Alabama and prior to the submission of the case moved that the bill of exceptions be stricken from the record in view of the fact that it had not been presented to the trial court within the time required by law (797-798).

It is on this motion that the opinion or decision of the lower court is based entirely. This was not a case of first impression as the decision of the Ala-

bama court contains a citation of numerous authorities in support of its ruling.

In construing Section 6433, supra,, it was held in the case of *Lewis vs. State*, 194 Ala. 1, 69 So. 913, that the time within which a bill of exceptions must be presented to the trial judge runs from the date when the judgment was rendered and entered and not from the date of sentence. Likewise, it has been held that the date on which the verdict is brought into court is not necessarily the day on which the ninety day statute begins to run but the day on which the judgment is entered.—*Lewis vs. Martin*, 210 Ala. 401, 98 So. 635; *Russell vs. State*, 202 Ala. 21, 79 So. 359.

The Supreme Court of Alabama, under a long line of decisions, is vested with no discretion in connection with the refusal or granting of a motion to strike a bill of exceptions where the motion is properly made and where it seasonably invokes the jurisdiction of the court.—*Baker vs. Central of Ga. Ry. Co.*, 165 Ala. 466, 51 So. 796; *Box vs. Southern Ry. Co.* 184 Ala. 598, 64 So. 69; *Ex parte Hill*, 205 Ala. 631, 89 So. 58.

Petitioner refers to the case of *Stover vs. State*, 204 Ala. 311 wherein is discussed Section 9459, Code of Alabama, 1923. This case is cited by him in connection with the statement that the Supreme Court of Alabama should have considered the evidence offered in connection with the motions to quash the venire and the indictment even though the bill of exceptions was stricken. We quote from that case:

". . . . But we did not there hold, and do not now hold, that the exceptions to the ruling upon motion in writing, or the rulings thereupon, must be shown by the bill of exceptions *though we may now say it would perhaps be necessary to set out the evidence in support of same by a bill of exceptions.*"

The decision of the Court of Appeals of Maryland in the case of *Lee vs. State*, 163 *Md.* 56 is cited by petitioner as authority for the position that the Alabama Court erred in not passing on the federal question even though the bill of exceptions was stricken because of the fact that the bill of exceptions is not the evidence in the case in the nisi prius court. With the decision of the learned Chief Justice of the Maryland Court, we have no complaint; we do submit, however, that the decision of a court of a sister state dealing with questions of state practice and procedure and construing statutory regulations can have no binding effect on a Supreme Court of another state who is also dealing with matters of state practice and procedure and statutory enactments.

the exclusive means of presenting to the appellate court

IV

JURISDICTION

Jurisdiction to review the decisions of the highest Courts of a State is conferred on the Supreme Court of the United States by Section 237 (B) *as amended by Act of February* 13, 1925, 43 *Stat.* 937. *The decisions of this Court are uniform in holding that said section of the Judicial Code does not confer*

upon it jurisdiction to review the decision of the highest court of a State where the decision is based on a non-federal question, particularly on a question of appellate procedure.

If we understand paragraph 3 of rule 7 of this Court, a respondent can no longer move to dismiss a petition for a writ of certiorari because of want of jurisdiction, but the question of jurisdiction of this Court must be dealt with in the brief in opposition to the granting of the writ. We, therefore, in this brief insist that this Honoranble Court is without jurisdiction to review the decision of the Supreme Court of Alabama in this case because of the fact that the decision is based upon a question of State practice and procedure and there is no federal question involved.

The present statute dealing with the jurisdiction of this Court over the decisions of the Courts of the several states is practically the same as the original or first statutory enactment on the subject the twenty-fifth section of the Judiciary Act of 1789.

In the case of *Crowell vs. Randell*, 10 Peters 398, Mr. Justice Story reviewed all of the cases which this Court had previously decided in which the above section was construed and said:

> "that to bring a case within the twenty-fifth section of the judiciary act, it must appear upon the face of the record: 1st. That some one of the questions stated in that section did arise in the State Court. 2nd. *That the question was decided by the State Court*, is required in the

same section. 3rd. That it is not necessary that the question should appear on the record to have been raised, and the decision made in direct and positive terms, ipsissimis verbis; but that it is sufficient if it appears by clear and necessary intendment that the qu estion must have been raised, *and must have been decided in order to have induced the judgment.* 4th. *That it is not sufficient to show that a question might have arisen or been applicable to the case;* unless it is further shown, on the record, that it did arise, and was applied by the State Court to the case."

We most respectfully submit that this Honorable Court after examining the decision of the Supreme Court of Alabama will come to the same conclusion as was reached in the Crowell case, supra, and will say as Justice Story said:

"If with these principles in view we examine the record before us, it is very clear that this Court has no appellate jurisdiction. No question appears to be raised or discussion made by the State Court within the purview of the twenty-fifth section."

This Honorable Court in numerous cases has laid down the principle that to give the Supreme Court of the United States jurisdiction over a decision of the highest Court of a State, it must appear affirmatively not only that the federal question was presented for decision but that its decision was necessary to a determination of the cause, and that it was actually decided, or that the judgment could not have been given without deciding it.

Cleveland and Pittsburgh R. R. Co. vs. City of Cleveland, Ohio, 235 U. S. 50.
Chesapeake and Ohio Ry. Co. vs. McDonald Administrator, 214 U. S. 191.
Western Union Telegraph Co. vs. Wilson, 213 U. S. 52.
Sayward vs. Denny, 158 U. S. 180.

In *Williams vs. Oliver*, 53 U. S. (12 How) 111, it is said:

> "In order to give this Court jurisdiction on writ of error to the highest Court of a State in which a decision could be had, it must appear affirmatively not only that a Federal question was presented for decision by the highest Court of the State having jurisdiction but that its decision was necessar yto the determination of the cause, that it was actually decided or that the judgment so rendered could not have been given without deciding it, *and where the decision complained of rests on independent grounds not involving a federal question and broad enough to maintain the judgment, the writ of error will be dismissed by this Court without considering any federal question that may also have been presented.*"

Likewise a number of cases definitely settle the proposition that a decision of a State Court resting on grounds of State procedure does not present a Federal question.

French vs. Hopkins, 124 U. S. 524.
O'Neil vs. Vermont, 144 U. S. 323.
Tripp vs. Santa Rosa St. R. Co. 144 U. S. 126.

Thorington vs. Montgomery, 147 U. S. 490.
Loeber vs. Schroeder, 149 U. S. 580.
McNulty vs. California, 149 U. S. 645.
Wood vs. Brady, 150 U. S. 18.
Northern Pacific R. R. Co. vs. Patterson, 154 U. S. 130.
Gibson vs. Mississippi, 162 U. S. 565.

The case of *Maria Mathison et als vs. The Branch Bank of the State of Alabama*, 7 Howard 260, we most respectfully submit is direct authority for the contention of the State of Alabama that this Honorable Court will not review the decision of the Supreme Court of Alabama in this case. Mr. Justice Taney delivering the opinion of the Court in the Mathison case, supra, wherein it appeared that the Supreme Court of Alabama had dismissed the appeal on the grounds that the transcript of the record in the Circuit Court had not been filed in the Supreme Court, said:

> "This cause came on to be heard on the transcript of the record from the Supreme Court of th the State of Alabama, and was argued by counsel. On consideration whereof and it appearing to the Court upon an inspection of the said transcript that there is nothing in the record which this Court is authorized to review, it is thereupon now here ordered and adjudged by this Court, that this cause be and the same is hereby dismissed, for want of jurisdiction."

In the case of *Chesapeake and Ohio Ry. Co. vs. McDonald, Administrator*, 214 U. S. 191, this Court held:

"Where the State statute provides that an appeal from an order refusing to remove a cause to the Federal Court must be taken within two years, and no appeal is taken, and the highest Court of the State decides that an appeal from the judgment in the case taken more than two years after entry of the order refusing to remove does not bring up that order for review, the Federal question has not been properly preserved and this Court has no jurisdiction."

We would also like to call to the Court's attention to the case of *Harding vs. Illinois*, 196 U. S. 78, wherein it is held:

"This Court has no general power to review or correct the decisions of the highest State Court and in cases of this kind exercises a statutory jurisdiction to protect alleged violations, in State decisions, of certain rights arising under Federal authority; and if the question is not properly reserved in the State Court the deficiency cannot be supplied in either petition for rehearing after judgment or the assignment of error in this Court, or by the certification of the briefs which are not a part of the record by the clerk of the State Supreme Court.

"This Court will not reverse the judgment of a State Court holding an alleged Federal constitutional objection waived when the record discloses that no authority was cited or argument advanced in its support and it is clear that the decision was based upon other than Federal grounds and the constitutional question was not decided."

In the case of *Jacob Newman et al vs. Harry B. Gates*, 204 U. S. 89, the following principle is stated:

> "There has been no decision of the Federal question in the highest Court of the State in which a decision in the suit could be had, which is essential to sustain a writ of error from the Supreme Court of the United States, where the highest State Court dismissed an appeal in the suit because of a defect in the parties to such appeal."

In *Chappell Chemical, etc. Co. Virginia Sulphur Mines Co.*, 172 U. S. 472, it was held that no Federal question was disposed of by a decision of the Court of Appeals of Maryland, the language of that Court being as follows:

> "The appeal in this case having been prematurely taken, the motion to dismiss it must prevail. The defendant, long after the time fixed by the rule of the Court, demanded a jury trial, and without waiting for the action of the Court upon his motion, and indeed before there was any trial of the case upon its merits and before any judgment final or otherwise, was rendered, this appeal was taken from what the order of appeal calls the order of Court of the 6th of February, 1896, denying the defendant the right of a jury trial; but no such order appears to have been passed. On the day mentioned in the order of appeal there was an order passed by the Court below fixing the case for trial, but there was no action taken in pursuance of such order until subsequent to this appeal. There is another appeal pending here from the orders which were ultimately passed. Appeal dismissed."

We have carefully examined the cases cited by petitioner in his brief heretofore filed in this Court

and we respectfully submit that none of those cases is authority for the proposition that this Court will review a decision of the Supreme Court of a State in a case where the decision is based purely on a non-federal ground and particularly in a case where the Supreme Court of the State, under the statutes and former decisions of the Court, had no discretion in the matter on which the ruling was based.

CONCLUSION

It is, therefore, submitted that this Court is without jurisdiction to review the decision of the Supreme Court of Alabama in this case. Decisions of this Court are uniform in holding that the Supreme Court of the United States will not review a decision of a State Court based on a question of State practice and procedure.

Respectfully submitted,

THOMAS E. KNIGHT, JR.,
Attorney General of Alabama.

THOS. SEAY LAWSON,
Assistant Attorney General of Alabama,
Attorneys for Respondent.

APPENDIX

6433. Bills of exceptions may be presented to the judge or clerk at any time within ninety days from the day on which the judgment is entered, and not afterwards; and all general, local, or special laws or rules of Court in conflict with this section are repealed, abrogated and annulled. The judge or clerk must indorse thereon and as a part of the bill the true date of presenting, and the bill of exceptions must, if correct, be signed by the judge wtihin sixty days thereafter. When the bill of exceptions is presented to the clerk, it shall be his duty forthwith to deliver or forward it to the judge. Presentation of the bill of exceptions within ninety days after the granting or refusing of a motion for a new trial shall be sufficient to preserve for review the rulings of the trial Court on the trial of the original cause, as well as the ruling of the Court on the motion for a new trial.

6434. The appellate Court may strike a bill of exceptions from the record or file because not presented or signed within the time required by law, but shall not do so ex mero motu, but only on motion of a party to the record or his attorney; the object and effect of this statute being to allow parties to waive or consent for the time of signing bills of exceptions.

6667. The Circuit Courts of the several counties of the State shall be open for the transaction of any and all business, or judicial proceedings of every kind, from the first Monday in January to and including the last Saturday of June of every year; and from the first Monday after the fourth of July too,

and including, the last Saturday before Christmas day of every year.

6670. After the lapse of ten days from the rendition of a judgment or decree, the plaintiff may have execution issued thereon, and after the lapse of thirty days from the date on which a judgment or decree was rendered, the Court shall lose all power over it, as completely as if the end of the term had been on that day, unless a motion to set aside the judgment or decree, or grant a new trial has been filed and called to the attention of the Court, and an order entered continuing it for hearing to a future day.

Rule 22. Reasons in arrest of judgment, and reasons for new trial, and the affidavits in support thereof if any are relied on, shall be filed with the clerk, and notice thereof be given to the adverse party, one day before the argument. If the cause is tried on the last day of the term, the notice shall be given when the motion is entered. The party making such motion is entitled to the opening and conclusion of the argument. All such motions not acted on, or continued by order of the Court, are to be considered as discharged of course on the last day of the term.

Rule 7—(Par. 3) No motion by respondent to dismiss a petition for writ of certiorari will be rereceived. Objections to the jurisdiction of the Court to grant writs of certiorari may be included in briefs in opposition to petitions therefor.

case of Norris, and the trial court there ruled, that the papers filed and the testimony adduced upon the similar motions on the trial of Patterson should be treated as applicable, and the motions in the case of Norris were thus heard upon evidence which had been submitted on the trial of Patterson. The opinions of the trial judge denying these motions were the same in both cases.

In this aspect, the federal question now sought to be presented on behalf of Patterson is precisely the same as that which we have considered and decided in Norris' case, *ante*, p. —. But the State, by its Attorney General, contends that this Court has no jurisdiction in the instant case, in the view that the decision of the state court rested entirely upon a question of state appellate procedure and that no federal question is involved. Counsel for defendant opposes that view, and it becomes necessary for us to examine the record in order to determine whether the judgment of the state court is based upon a non-federal ground adequate to sustain it. *Ward* v. *Love County*, 253 U. S. 17, 22; *Davis, Director General* v. *Wechsler*, 263 U. S. 22, 24, 25; *Broad River Power Co.* v. *South Carolina*, 281 U. S. 537, 540; *Abie State Bank* v. *Bryan*, 282 U. S. 765, 773; *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282.

The question arises from the action of the Supreme Court of the State in striking defendant's bill of exceptions, which contained the evidence taken by the trial court on the motions to quash, upon the ground that the bill had not been presented in time. So holding, the Supreme Court of the State disregarded all questions reviewable alone by bill of exceptions, and finding no error in the record as thus considered, affirmed the judgment. The court did not discuss the federal question.

Under the Code of Alabama, a bill of exceptions must be presented "within ninety days from the day on which the judgment is entered", or "within ninety days after the granting or refusing of a motion for a new trial". Ala. Code, sec. 6433. Another section of the Code provides that "after the lapse of thirty days from the date on which a judgment or decree was rendered, the court shall lose all power over it, as completely as if the end of the term had been on that day, unless a motion to set aside the judgment or decree, or grant a new trial has been filed and called to the attention of the court, and an order entered continuing it for hearing to a future day". Ala. Code, sec. 6670.

The jury found its verdict against Patterson on December 1, 1933, and the court then adjudged him guilty as charged. On December 6, 1933, he was sentenced to death. The bill of exceptions was presented on March 5, 1934.

Upon the return of the verdict on December 1st, defendant's counsel requested an extension beyond thirty days within which to file a motion for a new trial, stating that a transcript of the testimony would be needed in order to prepare a proper motion. The application was denied, the trial judge stating in effect that defendant's counsel had thirty days within which to make a motion for a new trial, and that, after a motion so made, he might apply to the trial judge for "additional thirty day periods" in order to file an amended motion based upon the transcript. The motion for a new trial was filed on December 29, 1933, and it appears that a copy of the motion papers was received by the Attorney General without objection. On request of defendant's counsel, the motion was continued by the trial judge until February 24, 1934. The Attorney General then moved to strike the motion upon the ground that it had been filed after the expiration of the term of court, at which defendant was tried, and hence that the court was without jurisdiction. It appeared that the term had expired on December 23, 1933. The trial judge granted the motion to strike and the Supreme Court of the State sustained the ruling.

The state court pointed out that the ruling was in accord with *Morris* v. *Corona Coal Co.* (1926), 215 Ala. 47, in which the question had been directly presented.[1] The court said that the governing statutes, including section 6670, above quoted, were codified from the Act of 1915, page 707, sections 1 and 3; that, previously, all motions for new trials were required to be made within the terms; that, as to cases at law, terms were not abolished; that the statute making judgments final after thirty days was restrictive of the rule which had theretofore obtained by which the judgments were deemed to be within the breast of the court until the end of the term; and that the effect of the decision in the *Morris* case was to hold that the statute had not abrogated "the established rule that all judgments become final with the end of the term" and did not extend the thirty day period beyond that time. The court

[1]In the *Morris* case the verdict and judgment were of December 19, 1924; the motion for a new trial was of December 27, 1924, after the term had expired; and the motion had been passed to January 5, 1925, for hearing.

cited several cases to show that the ruling was "in keeping with former decisions through a long period of years".

But the striking of the motion for a new trial did not dispose of the bill of exceptions. It would still have been in time if it had been presented within ninety days from the day of the judgment. It was in time if that day was December 6, 1933, when defendant was sentenced, but it was too late if judgment was entered on December 1, 1933. The Supreme Court of the State took the latter view. The court held that the time for presenting bills of exceptions "runs from the date of the judgment of guilty, not from the date of sentence". The court cited the case of *Lewis* v. *The State* (1915), 194 Ala. 1, where that rule had been laid down. And in view of this long established rule in Alabama as to the day from which the time should be reckoned, the state court was undoubtedly at liberty, without violating any federal right, to hold that the bill of exceptions had not been presented within the designated period of ninety days.

There remains, however, a further question. For it does not appear that the failure to file a bill of exceptions in time is sufficient in itself to deprive the state appellate court of jurisdiction. On the contrary, the statute of Alabama expressly denies to the court the authority, on its own motion, to strike a bill of exceptions because not filed in time, and provides for that action only upon motion of a party to the record or his attorney. The statute in terms allows parties to waive the objection. We quote its provisions: "The appellate court may strike a bill of exceptions from the record or file because not presented or signed within the time required by law, but shall not do so *ex mero motu*, but only on motion of a party to the record or his attorney; the object and effect of this statute being to allow parties to waive or consent for the time of signing bills of exceptions". Ala. Code, sec. 6434. The state court cited its former decisions which construed the "waiver or consent", to which the provision referred, to be "such as is indicated by a failure to move to strike upon submission of the cause on appeal", and held that when such a motion is made, it is the duty of the court to grant it. *Baker* v. *Central of Georgia Railway Co.*, 165 Ala. 466; *Ex parte Hill*, 205 Ala. 631; *Ettore* v. *State*, 214 Ala. 99; *Beatty* v. *McMillan*, 226 Ala. 405.

While we must have proper regard to this ruling of the state court in relation to its appellate procedure, we cannot ignore the

exceptional features of the present case. An important question under the Federal Constitution was involved, and, from that standpoint, the case did not stand alone. As the opinion of the state court observes, there was "being considered along with this cause, the appeal of *Clarence Norris* v. *State of Alabama*, 156 So. 556, from a conviction under the same indictment". 156 So. pp. 567, 568. The validity of the common indictment had been challenged by a motion on behalf of both defendants because of the unconstitutional discrimination. It is true that the *Patterson* case was brought up on a separate appeal, and on a separate record, but it appeared from the record before the court in the *Norris* case that the evidence upon the motions to quash was the same evidence (introduced by stipulation) as that which had been taken in the *Patterson* case. The bills of exceptions had been presented in both cases on the same day, March 5, 1934. When the Attorney General, on February 24, 1934, had moved to strike the motion for a new trial, he had expressly referred to the judgment as having been rendered on December 6, 1933, a statement not obviously inaccurate, because there was an entry of a formal judgment of sentence on that day, and, coming from the Attorney General, the statement may have misled defendant's counsel. If that statement had been correct, the bill of exceptions would have been timely. The Attorney General did not make his motion until May 25, 1934. We are not advised that previous state decisions had dealt with a situation having such unusual incidents.

The decisions in the two cases were announced on the same day. The state court decided the constitutional question against Norris, and it was manifestly with that conclusion in mind that the court approached the decision in the case of Patterson and struck his bill of exceptions. We are not satisfied that the court would have dealt with the case in the same way if it had determined the constitutional question as we have determined it. We are not convinced that the court, in the presence of such a determination of constitutional right, confronting the anomalous and grave situation which would be created by a reversal of the judgment against Norris, and an affirmance of the judgment of death in the companion case of Patterson, who had asserted the same right, and having regard to the relation of the two cases and the other circumstances disclosed by the record, would have considered itself

powerless to entertain the bill of exceptions or otherwise to provide appropriate relief. It is always hazardous to apply a judicial ruling, especially in a matter of procedure, to a serious situation which was not in contemplation when the ruling was made. At least the state court should have an opportunity to examine its powers in the light of the situation which has now developed. We should not foreclose that opportunity.

We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered. We may recognize such a change, which may affect the result, by setting aside the judgment and remanding the case so that the state court may be free to act. We have said that to do this is not to review, in any proper sense of the term, the decision of the state court upon a non-federal question, but only to deal appropriately with a matter arising since its judgment and having a bearing upon the right disposition of the case. *Gulf, Colorado & Santa Fe Railway Co.* v. *Dennis,* 224 U. S. 503, 507; *Watts, Watts & Co.* v. *Unione Austriaca,* 248 U. S. 9, 21; *Dorchy* v. *Kansas,* 264 U. S. 286, 289; *Missouri ex rel. Public Service Commission,* 273 U. S. 126, 131.

Applying that principle of decision, we vacate the judgment and remand the case to the state court for further proceedings.

It is so ordered.

Mr. Justice McReynolds did not hear the argument and took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.